

BEFORE THE WELLINGTON CITY COUNCIL

IN THE MATTER OF of the Resource Management Act 1991

AND

IN THE MATTER OF The Wellington City Proposed District Plan

**STATEMENT OF EVIDENCE BY KIRSTY O'SULLIVAN
ON BEHALF OF WELLINGTON INTERNATIONAL AIRPORT LIMITED**

(SUBMITTER 406, FUTHER SUBMITTER 36)

28 AUGUST 2024

1. INTRODUCTION

- 1.1 My name is Kirsty O’Sullivan. I am a Partner at the resource management and environmental consultancy, Mitchell Daysh Limited.
- 1.2 I have appeared before the Independent Hearings Panel with respect to Hearing Streams 5 to 9 of the Proposed Wellington City District Plan (“**Proposed Plan**”) on behalf of Wellington International Airport Limited (“**WIAL**”). Within my brief of evidence for Hearing Stream 5, I set out my qualifications and experiences as an expert planning witness. I do not repeat that here.

Code of Conduct Statement

- 1.3 While this is not an Environment Court hearing, I nonetheless confirm that I have read the Code of Conduct for Expert Witnesses contained in the Environment Court Practice Note 2023. I agree to comply with the Code and I am satisfied that the matters which I address in my evidence are within my field of expertise. I am not aware of any material facts that I have omitted which might alter or detract from the opinions I express in my evidence.

Scope of Evidence

- 1.4 This statement of evidence relates to Hearing Stream 11 (Ecosystems and Indigenous Biodiversity) of the Proposed Plan. It specifically addresses the submission and further submission points made by WIAL.
- 1.5 WIAL is interested in the proposed Ecosystem and Biodiversity related provisions of the Proposed Plan primarily due to the proposed Moa Point Gravel Dunes Significant Natural Area (“**SNA**”) and the proposed Lyall Bay Dunes SNA being located at the southern and western extent of the existing engineered seawalls surrounding the Airport and Moa Point Road.
- 1.6 In this brief of evidence, I will:

- 1.6.1 Provide an overview of the regional policy framework for managing effects on indigenous biodiversity within the coastal environment, as set in Plan Change 1 to the Greater Wellington Regional Policy Statement (“**PC1 to the RPS**”) and the Operative Greater Wellington Natural Resources Plan (“**NRP**”);
 - 1.6.2 Consider the mapped extent of the Moa Point Gravel Dunes and Lyall Bay Dunes SNAs and whether, in light of contrasting evidence, the boundaries of the mapped SNA should be refined;
 - 1.6.3 Consider the policy setting for infrastructure and more specifically, infrastructure located within the coastal environment and SNAs and how these are best provided for.
- 1.7 In preparing this statement of evidence, I confirm that I have read the following documents:
- 1.7.1 Part 2 District Wide Matters - Ecosystems and Indigenous Biodiversity and Part 2 District Wide Matters – Infrastructure – Ecosystems and Indigenous Biodiversity;
 - 1.7.2 WIAL’s submission and further submission;
 - 1.7.3 The Proposed Plan Hearing Stream 11 report prepared under section 42A (“**the section 42A report**”) of the Resource Management Act 1991 (“**the RMA**” or “**the Act**”) relating to ecosystems and indigenous biodiversity (dated 12 August 2024) and the accompanying evidence prepared by Mr Nick Goldwater (dated 9 August 2024).
 - 1.7.4 The statement of evidence prepared by Dr Anderson regarding the Moa Point Gravel Dunes SNA and the Lyall Bay Dunes SNA and the associated documents;

- 1.7.5 The statement of evidence prepared by Ms Lester regarding the construction/reclamation history of the Moa Point area, and how part of this area relates to the Seawall Renewal Project;
- 1.7.6 The National Policy Statement for Indigenous Biodiversity 2023;
- 1.7.7 The expert witness caucusing statement relating to Hearing Stream 6 of PC1 to the RPS;
- 1.7.8 The Right of Reply for Hearing Stream 7 of PC1 to the RPS relating to the definition of Regionally Significant Infrastructure and the associated Right of the Reply for Hearing Stream 9 (Infrastructure) of the Proposed Plan relating to the same matter;
- 1.7.9 The Operative Greater Wellington Natural Resources Plan (“**NRP**”); and,
- 1.7.10 The section 32 Evaluation Reports relating to Ecosystems and Indigenous Biodiversity and Infrastructures – Ecosystems and Indigenous Biodiversity.

2. PC1 TO THE RPS AND THE NRP

- 2.1 As the Panel is aware, Greater Wellington Regional Council (“**GWRC**”) is in the final stages of PC1 to the RPS. I understand a decision with respect to this plan change is imminent.
- 2.2 As relevant to this hearing, PC1 to the RPS seeks to introduce a range of new provisions relating to:
 - 2.2.1 the definition of regionally significant infrastructure; and,
 - 2.2.2 the management of indigenous biodiversity.
- 2.3 In my assessment, a number of these provisions are relevant, or are likely to be relevant to the matters before the panel. I address these matters (insofar as relevant to WIAL’s submission) below.

Regionally Significant Infrastructure

- 2.4 As the Panel may recall from my Hearing Stream 9 evidence, the reporting officer for PC1 to the RPS recommends some amendments to the definition of “regionally significant infrastructure”, including how Wellington International Airport (“**the Airport**”) is described. For ease of reference, the definition, as promoted in the GWRC right of reply, is provided below and is attached in full as **Annexure A**.

Wellington International Airport including infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to land and water used in connection with the airport.

This includes infrastructure, buildings, installations and equipment not located on airport land.

- 2.5 In the right of reply for Hearing Stream 9 to the Proposed Plan, the section 42A reporting officer¹ reached the view that “*this definition of Regionally Significant Infrastructure makes it clear that the seawall should be considered as part of the airport*”.
- 2.6 As set out in my Hearing Stream 9 statement of evidence, the definition of “infrastructure” incapsulates the Seawalls that serve to protect the airport runways and associated WCC infrastructure. Proposed PC1 to the RPS definition further supports this position.
- 2.7 For this reason, my evidence focuses on the INF-ECO provisions, with reference to the ECO provisions only being made when relevant to the interpretation or implementation of the INF-ECO provisions.

¹ Tom Anderson.

Indigenous Biodiversity

- 2.8 PC1 to the RPS also proposes the introduction of a range of new provisions relating to the management of indigenous biodiversity, including within the Coastal Environment.
- 2.9 The notified provisions were subject to expert witness conferencing and a substantially revised set of provisions was presented to the Independent Hearings Panel during the course of Hearing Stream 6 of that process. For ease of reference, a copy of the expert witness conferencing statement and associated provisions are attached as **Annexure B**. For the most part, the content of the provisions was agreed by the parties and the statement is now with the Panel who will soon issue their decision.
- 2.10 Of particular relevance to this hearing are Policies 24C and 24CC which relate to the management of indigenous biodiversity within the coastal environment.
- 2.11 Policy 24C of the conferenced provisions directs district plans to include policies, rules and methods to manage adverse effects on indigenous biodiversity values in the coastal environment to:
- 2.11.1 Avoid adverse effects on ecosystems, habitats and species with significant indigenous biodiversity values akin to those described in Policy 11(a) of the New Zealand Coastal Policy Statement (“**NZCPS**”);
 - 2.11.2 Avoid significant adverse effects on identified indigenous ecosystems and habitats akin to those described in Policy 11(b) of the NZCPS; and
 - 2.11.3 Manage non-significant adverse effects on the indigenous ecosystems and habitats identified above and significant adverse effects on other indigenous biodiversity using the effects management hierarchy.

2.12 Policy 24CC of the conferenced version of the provisions directs district plans to include policies, rules and methods to consider providing for the operation, maintenance, upgrade and extension of existing regionally significant infrastructure where it may have certain adverse effects (akin to those described in Policy 11(a) and 11(b) of the NZCPS) where:

2.12.1 There is a functional or operational need for the regionally significant infrastructure to be in that area;

2.12.2 There is no practicable alternative on land or elsewhere within the coastal environment;

2.12.3 The activity provides for the maintenance and where practicable, enhance or restoration of the effects on significant indigenous biodiversity values and attributes.

2.13 Until decisions are issued on PC1 of the RPS, I acknowledge that these policies are not operative and therefore the weight to be attached would usually be limited. However, it is notable that both of these policies are worded to be consistent with Policies 38 and 39 of the operative NRP. A copy of these NRP provisions is attached as **Annexure C**.

2.14 I understand that in accordance with section 75 of the RMA, District Plans must give effect to a regional policy statement and must not be inconsistent with a regional plan. Against this backdrop, I consider that even in the absence of a decision on PC1 to the RPS, the approach set out in Policies 38 and 39 (and thus Policies 24C and 24CC of the conferencing statement which almost mimic Policies 38 and 39) should draw considerable statutory weight by virtue of their inclusion in the operative NRP.

2.15 Accordingly, in my view, the policy framework of the ECO chapter and more relevantly, the INF-ECO chapter, should reflect the policy approach described in Policies 24C and 24CC of PC1 to the RPS, and in turn, Policies 38 and 39 of the NRP.

2.16 For completeness, I also note that Policy 41 of the operative NRP also includes a Wellington Airport specific policy relating to the management response for effects arising as a result of airport related activities² within the “Wellington Airport South Coastal Environment” where located “... *within a site that meets any of the criteria in Policy P38(a)(i)-(v) or (b)...*”. The NRP Policy 38 criteria referenced are akin to those described in Policy 11(a) and (b) of the NZCPS. For completeness, Policy 41 of the NRP is set out in full below and is also attached as **Annexure C**.

Policy P41: Wellington Airport South Coastal Environment

When considering the effects of airport related activities within a site that meets any of the criteria in Policy P38(a)(i) – (v) or (b) or included in Schedule F5 recognise:

- (a) that the existing airport is located in the coastal environment and the airport needs to provide for its efficient and safe operations, and the development of capacity to sustain the potential of the airport to meet the reasonably foreseeable needs of future generations, and*
- (b) that there must be a functional need or operational requirement for the activity to locate in that area and there is no practicable alternative on land or elsewhere in the coastal marine area for the activity to be located, and*
- (c) the extent to which any significant indigenous biodiversity values and attributes are enhanced or restored as part of a biodiversity management plan that sets out how the significant indigenous biodiversity values and attributes will be affected by the activity, and*
- (d) the matters in Policy P3*

² Note this term is not defined in the NRP.

3. SCHEDULE 8 NGA WAHI TAIAO MATUA SIGNIFICANT NATURAL AREAS – WCC 175 MOA POINT GRAVEL DUNES AND WC176 LYALL BAY DUNES

3.1 As notified, the Proposed Plan (as notified) identified SNAs directly adjacent to Wellington International Airport (“the Airport”). These two areas include:

3.1.1 The Moa Point Gravel Dunes (WC175); and

3.1.2 The Lyall Bay Gravel Dunes (WC176).

3.2 The location of each SNA is shown in

3.3 Figure 1 below.

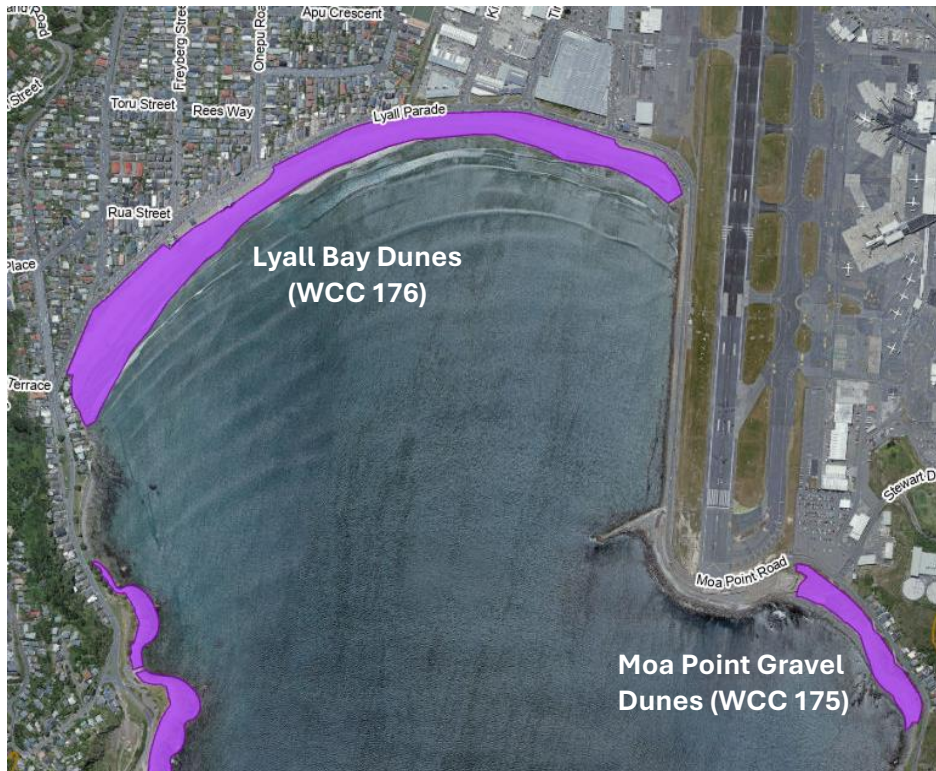


Figure 1: Lyall Bay Dunes (WCC 176) and Moa Point Gravel Dunes (WCC175), as shown in the notified Proposed Plan.

3.4 I understand that during the promulgation of the Plan, these areas were mapped by Wildland Consultants (2016). The Wildlands report identified that

the “Assessments are based on historical and desktop information, and values and significant assessments need to be confirmed by site visit”.

- 3.5 WIAL submitted in opposition to these two mapped areas and sought that they be deleted until such a time that detailed field investigations were complete, and that assessment confirmed the entire areas are genuinely “significant” and warrant the degree of protection afforded to SNAs.
- 3.6 In response to WIAL’s submission, field observations were undertaken of the two SNAs in question by Mr Goldwater (Wildlands). A spreadsheet with details of the observations taken during the site visit, the results of desktop analyses and conclusions around the SNA status of the areas (in light of the criteria specified in Policy 23 of the RPS and the National Policy Statement for Indigenous Biodiversity (“**NPS-IB**”)) were recorded by Mr Goldwater and attached as Appendix 1 of his statement of evidence.
- 3.7 As a result of this site visit, I understand Mr Goldwater maintains his view that the Lyall Bay Dune and Moa Point Gravel Dune SNAs should remain as SNA’s. A similar recommendation has been made by the section 42A reporting officer.³
- 3.8 As set out in detail by Ms Lester, “Moa Point Seawalls Area” and its immediate surrounds are located within a highly modified part of the coastal environment. The present-day coastline reflects two extensive periods of reclamation – one commencing in the 1950s, and the second in the 1970s. The coastline and the areas of land immediately behind them are therefore artificially constructed. This, in itself, raises questions in my view around whether the significance status ascribed to the “dunes” are justified in these locations.

³ Table 5 and paragraph 235, section 42A report dated 12 August 2024.

- 3.9 Dr Anderson, on behalf of WIAL, has also undertaken a detailed review of the two areas. As described in his evidence, this includes both visiting the areas and undertaking a desktop review of the results of previous investigations.
- 3.10 Based on Dr Anderson's assessment, I understand there is no dispute that part of the western portions of the Lyall Bay Dunes and eastern portion of the Moa Point Gravel Dunes qualify as SNAs. The key point of difference relates to the delineation of the features, that is where each SNA begins and ends.
- 3.11 I note that Dr Anderson has thoroughly reviewed and considered this when undertaking his site visit and review of each proposed SNA. Based on Dr Anderson's review of Mr Goldwater's evidence, it appears to me that Mr Goldwater's analysis was more holistically focused on the broader values across each SNA, as opposed to the specific delineation of them.
- 3.12 With respect to the Lyall Bay Dunes SNA specifically, Dr Anderson notes that:
- 3.12.1 The dunes are heavily modified at the eastern end of Lyall Bay and differ from the rest of the bay;
 - 3.12.2 Only one At Risk plant species is present in the eastern end of Lyall Bay which was planted post 2018;
 - 3.12.3 There are no Threatened or At Risk bats or lizards present; and
 - 3.12.4 There is no indication that the area is frequently used as a significant roost site for Threatened or At Risk birds, other than red-billed gulls.
- 3.13 He therefore concludes that the eastern end of Lyall Bay does not meet the requisite SNA criteria and recommends some refinements to the mapped extent and description of this feature.
- 3.14 With respect to the Moa Point Gravel Dunes SNA specifically, Dr Anderson notes that:
- 3.14.1 The northern dune sections are heavily modified and the result of past reclamations. None of the natural shoreline remains in the

western area and therefore does not comprise a natural shingle beach/ dune ecosystem;

3.14.2 No Threatened or At Risk plant species, bats or lizards were detected within the western portion of the site; and

3.14.3 There is no indication that this area is frequently used as a significant roost site for Threatened or At Risk birds, other than red-billed gulls and potentially little blue penguins.

3.15 He therefore concludes that the western portion of the Moa Point Gravel Dunes does not meet the requisite SNA criteria and recommends some refinements to the mapped extent and description of this feature.

3.16 Overall, based on a more detailed review of the boundaries of the SNAs, Dr Anderson has detailed why the eastern portion of the Lyall Bay Dunes SNA and the western extent of the Moa Point Gravel Dunes do not qualify as SNA. It is not apparent that this same level of detailed analysis has been undertaken by Mr Goldwater, however based on Dr Anderson's evidence, it would appear his assessment was more holistic and less focused on the delineation of each SNA.

3.17 On the basis of Dr Anderson's evidence, it is my opinion that the extent of the SNA should be refined, as per the mapping identified in his statement of evidence, and well as the description amendments that he suggests which more accurately reflect the species present and their current classification status.

4. INFRASTRUCTURE – ECOSYSTEMS AND INDIGENOUS BIODIVERSITY CHAPTER

4.1 As the Panel is aware, WIAL's Seawall Renewal Project is imminent, with the Seawalls having reached the end of their design life. With this awareness, WIAL's submissions on the Proposed Plan therefore sought to ensure there

was a viable consenting pathway for the project elements located with the notified SNAs via a two-pronged approach:

- 4.1.1 Questioning whether the SNA status is justified, noting it was initially based on a desktop analysis. This aspect to WIAL's submission has been addressed in Section 3 above and Dr Anderson's statement of evidence; and,
 - 4.1.2 Ensuring there is a viable consenting pathway available through the relevant INF-ECO provisions.
- 4.2 I note that should the mapping of the two SNAs be updated as per the recommendation set out in Dr Anderson's evidence, WIAL would no longer have an interest in Policies INF-ECO-P33 and P34. Notwithstanding this, the discussion set out in the following sections around the consistency between the Proposed Plan and higher order documents remains a relevant consideration for all infrastructure located within the coastal environment and a SNA.

Policy INF-ECO-P33

- 4.3 As notified, Policy INF-ECO-P33 seeks to provide for the operation, maintenance and repair of existing infrastructure within SNAs where the activity, including associated earthworks, does not adversely affect biodiversity values.
- 4.4 WIAL filed a submission seeking that this policy be deleted or amended as follows:⁴

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

⁴ Note the tracking was incorrect in the original submission table. Not all new text to be added was shown as underlined. All text to be removed was accurately shown as strike out.

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 applied in accordance with ECO-P1.*

4.5 The section 42A report recommends rejecting WIAL's submission, suggesting⁵ (my paraphrasing) that:

4.5.1 The policy relates to existing infrastructure, therefore justification around its siting and location is not necessary; and,

4.5.2 The phrase "maintenance and repair" is defined and only allows for work necessary to enable the continued operation or functioning of existing infrastructure, with any replacement works required to be of an identical dimension to the original structure.

4.6 While I acknowledge the matters raised by the section 42A reporting officer with respect to clauses 1 and 2 of WIAL's submission, I have residual concerns around the drafting of INF-ECO-P33 which are not addressed by the section 42A reporting officer's recommendation to retain the policy as notified.

4.7 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.

4.8 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)

⁵ Paragraphs 796 to 798, Ecosystems and Indigenous Biodiversity Section 42A Report, dated 12 August 2024.

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.

- 4.9 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 3.18.⁶ 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 operational or functional need to be in that location and there is no alternative location.⁷
- 4.10 My concern with INF-ECO-P33 is how the policy may be applied in future resource consent applications, notice of requirements and/or plan changes relating to existing infrastructure within an SNA. The requirement for there to be no adverse effects, irrespective of the nature or scale of those effects has the potential, in my opinion, to curtail almost any future infrastructure development within these areas.
- 4.11 It is also inconsistent with the policy directive within the NPS-IB, which appropriately provides a specific pathway for “specified infrastructure” located within SNAs provided they provide for significant national or regional benefits, have a functional or operational need to locate within the SNA, and there are no practicable alternatives (Clause 3.11(a)(i)).
- 4.12 I also note that where the operation, maintenance, repair and removal of existing infrastructure within a SNA does not meet the relevant permitted activity requirements of the Proposed Plan (i.e. those specified in INF-ECO-R41), the matters of discretion and the assessment criteria only partially give effect to the NPS-IB, as they do not apply the effects management hierarchy.

⁶ Policy 3.15(3), NPS-IB.

⁷ In accordance with Clause 3.11(1), NPS-IB.

4.13 Unlike PC1 to the RPS or the NRP, Policy INF-ECO-P33 also does not properly recognise the importance of upgrading of infrastructure. While I discuss this matter in detail with respect to Policy INF-ECO-P34 below, I note that excluding upgrading from this policy is problematic when considered in the context of the directive language used in the s42A version of INF-ECO-P34.

4.14 I therefore recommend 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 as follows:

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 it does not adversely affect the biodiversity values; or*
- 2. a. provides significant national or regional public benefit;*
 - b. there is a functional need or operational has an operational or functional need to be in that particular location and where there are no practicable alternative locations for the activity; and.*
 - c. the adverse effects on indigenous biodiversity values are managed in accordance with ECO-P5.*

Section 32AA evaluation

4.15 In my opinion, the proposed amendments to the policy are more appropriate at achieving the objectives of the Proposed Plan than the notified policy or s42A provisions. In particular, I consider that my recommended amendments:

4.15.1 Provide greater consistency and alignment of the provisions with the NPS-IB and PC1 to the RPS directives;

4.15.2 Give effect to section 6(c) of the RMA as it recognises and provides for the protection of SNAs while also having regard to the efficient use of existing physical resources (section 7(b));

4.15.3 Are more efficient and effective than the notified and section 42A report provisions in achieving the objectives of the Proposed Plan, particularly INF-O1 and O2.

4.15.4 Will not give rise to any new costs or benefits that are not already accounted for in the NPS-IB and the NRP.

Policy INF-ECO-P34

4.16 INF-ECO-P34 (as notified) seeks to allow for upgrades to existing as well as providing for new infrastructure within SNAs, provided it can be demonstrated that the operational and functional need of the infrastructure means locating in the SNA cannot be avoided, and that any adverse effects on indigenous biodiversity value within the SNA are managed in accordance with the relevant effects management hierarchy policy (i.e. as notified, Policy ECO-P1).

4.17 WIAL filed a submission seeking to delete the policy, or alternatively, to amend the policy to qualify the “avoidance” requirement by inserting the term “practicable” into the policy. WIAL’s submission also sought to ensure that any management response for infrastructure was to be in accordance with the effects management hierarchy, which was reflected in Policy ECO-P1 as notified.

4.18 The section 42A report recommends accepting WIAL’s alternate relief and proposes two amendments to INF-ECO-P34⁸. In response to a submission made by Forest and Bird however, the section 42A report also recommends that a new clause 3 is inserted into the policy as follows:

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 practicably be avoided; and*

⁸ Paragraphs 805 and 808, Ecosystems and Indigenous Biodiversity Section 42A Report, dated 12 August 2024.

2. Any adverse effects on indigenous biodiversity values within a significant natural area are ~~managed~~^{applied} in accordance within ECO-P5~~2~~;
3. If the significant natural area is located within the Coastal Environment:
 - a. Avoid adverse effects on the matters in Policy 11(a) of the New Zealand Coastal Policy Statement 2010; and
 - b. Avoid significant adverse effects of activities on the matters in Policy 11(b) of the New Zealand Coastal Policy Statement; and
 - c. Manage other adverse effects in accordance with the effects management hierarchy at ECO-P5.

4.19 I have two key concerns arising as a result of this redrafting and the subsequent amendments to the policies referred to within it. I address each in turn below.

ECO-P5 - Effects management hierarchy policy

- 4.20 The section 42A report has recommended replacing notified “ECO-P1 Protection of Significant Natural Areas” with a newly drafted ECO-P5 Effects management hierarchy (which in turn refer to new ECO-P3 and P4). While clauses 1 to 6 of new Policy ECO-P5 are consistent with the NPS-IB effects management hierarchy definition, the cross referencing within the chapeau of the policy creates a potentially insurmountable consenting barrier for specified infrastructure.
- 4.21 ECO-P3 identifies a range of adverse effects that new use or development activities must avoid, unless expressly provided for by ECO-P4. The drafting of ECO-P3 is akin to Clause 3.10(2) of the NPS-IB.
- 4.22 ECO-P4 identifies a list of four use and development activities that can apply the “effects management hierarchy” (described in ECO-P5) to the any adverse effects arising within an SNA. The listed use and development activities are akin to Clauses 3.11(a)(ii), 3.11(b), 3.11(c) and 3.11(2) of the NPS-IB.

- 4.23 ECO-P5 then seeks to manage the adverse effects of use and development on SNAs not referred to in ECO-P3 or that are specified in ECO-P4 by applying the effects management hierarchy described in the policy.
- 4.24 However ECO-P4 does not refer to specified infrastructure. I understand this is because “... *this is dealt with in the INF-ECO chapter and has a bespoke policy direction.*”⁹
- 4.25 The issue I have identified is that INF-ECO-P34 cross references ECO-P5, which only allows for the effects management hierarchy to be engaged if ECO-P4 can be met. Because ECO-P4 does not refer to specified infrastructure, infrastructure cannot engage ECO-P5. I suspect it was not the intention of the section 42A reporting officer and could be easily rectified by referring to specified infrastructure in ECO-P4.
- 4.26 I do not consider a section 32AA evaluation is required in relation to the above recommendation as it is not changing the substance of the provisions, rather the changes ensure the mechanics of the Proposed Plan operate as intended.

Consistency with PC1 RPS and the NRP

- 4.27 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.
- 4.28 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.¹⁰

⁹ Paragraph 339, Ecosystems and Indigenous Biodiversity Section 42A Report, dated 12 August 2024.

¹⁰ Such as Policy 1(1) and (2)(i), Policy 6(1)(a), (b) and (2)(c) and Policy 27(1)(c) insofar as it anticipates infrastructure will be protected.

- 4.29 By contrast, INF-ECO-P34 (and clause 3 in particular) lacks the same nuance of Policy 24CC (or Policy 39 and 41), and instead limits the analysis to Policy 11(a) and (b) of the NZCPS. Given that PC1 to the RPS and the NRP have both been drafted to give effect to the NZCPS and have carefully reconciled the competing provisions both within the NZCPS and between NPS, it is inappropriate in my view for INF-ECO-P34 to be amended through the inclusion of new clause 3.
- 4.30 Furthermore, Policy INF-ECO-P34 (3) also fails to differentiate the policy directives for upgrades to existing and new regionally significant infrastructure and in doing so, does not recognise the need to upgrade existing infrastructure in a manner that is consistent with higher order planning documents.
- 4.31 In my view the intention of Policies 38, 39 and 41 of the NRP are clear and provide a structured approach for managing indigenous biodiversity within the coastal environment in a manner that is consistent with the NZCPS. This direction is reflected in the conferencing statement for PC1 to the RPS which include Policies 24 to 24CC. Importantly, the conferencing statement of these provisions also recognises the NPS-IB includes a statement that both the NZCPS and the NPS-IB apply within the terrestrial coastal environment but in the event of conflict the provisions of the NZCPS prevails.¹¹
- 4.32 Overall, insofar as it relates to the coastal environment and SNAs, INF-ECO-P34 is not currently aligned with the NRP and will likely not be aligned with the RPS if that Panel accepts the conference statement version of Policy 24C and 24CC following decisions on PC1.
- 4.33 Following a brief analysis of the submissions filed with respect to INF-ECO-P34 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

¹¹ Clause 1.4(1) and (2), NPS-IB.

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.

- 4.34 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.
- 4.35 In the intervening period, it may be necessary for resource consent applications or notice of requirements for new infrastructure within the coastal environment to consider the higher order documents on a case-by-case basis relevant to the circumstances of that particular application.
- 4.36 I do not consider that this potential interim scenario will result in any significant costs on infrastructure providers as in my experience this broader analysis is undertaken in any event.
- 4.37 I do not consider a further section 32AA evaluation is required in relation to the removal of clause (3). As previously noted, inclusion of this clause will create inconsistency with higher order documents, therefore I do not agree with the section 32AA evaluation provided in support of the new clause 3, as set out in the section 42A report.

5. CONCLUSION

- 5.1 WIAL's Seawall Renewal Project is imminent, with the seawalls having reached the end of their design life. With a significant consenting task ahead, WIAL is therefore concerned with ensuring a viable consenting pathway is available for this important project.
- 5.2 The future seawall renewal project will, for operational and functional reasons, need to temporarily occupy parts of the Moa Point Gravel and

possibly the Lyall Bay Dunes¹² SNAs currently mapped in the Proposed Plan. WIAL therefore engaged Dr Anderson to undertake a detailed review of the location of these SNAs to confirm if they are justified and if so, is the delineation appropriate.

- 5.3 Based on Dr Anderson's evaluation, the westernmost portion of the Moa Point Gravel Dunes SNA and the eastern most portion of the Lyall Bay Dunes do not qualify as SNA. Accordingly, he recommends reviewing the extent of the SNAs.
- 5.4 Should the mapping of the two SNAs be updated as per the recommendation set out in Dr Anderson's evidence, WIAL would no longer have a strong interest in Policy INF-ECO-P33 and P34. Notwithstanding this, the discussion set out in my evidence identifies some difficulties with the policy approach for infrastructure, particularly in light of the PC1 to the RPS and NRP policy directives around the management of effects on SNA within the coastal environment. These provisions raise issues around the consistency between the Proposed Plan and the relevant higher order documents and remains a relevant consideration for all infrastructure within the coastal environment.

Kirsty O'Sullivan

28 August 2024

¹² Note that this comprises Stage 2 of the project works, therefore plans have not yet been developed for this area.

**Annexure A – Greater Wellington Regional Council PC to the RPS, Hearing Stream 7
Right of Reply recommended amendments to provisions.**

Appendix 1: Right of Reply Recommended Amendments to Provisions - Hearing Stream 7 – Definitions

Red text and underline reflects s42A recommendations, blue text and underline reflects rebuttal evidence recommendations and green text and underline reflects right of reply recommendations

Method 16 (tracked)

Method 16: Information about locations with good access to the *strategic public transport network*

Prepare and disseminate information to support the identification of locations with good access to the *strategic public transport network*.

Method 16 (clean)

Method 16: Information about locations with good access to the *strategic transport network*

Prepare and disseminate information to support the identification of locations with good access to the *strategic transport network*.

Wellington International Airport (tracked)

Wellington International Airport including all supporting navigational infrastructure including its infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to any such area, land and water used in connection with the airport or its administration.

This includes infrastructure, buildings, installations and equipment not located on airport land.

Wellington International Airport (clean)

Wellington International Airport including infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to, land and water used in connection with the airport.

This includes infrastructure, buildings, installations and equipment not located on airport land.

Regionally significant infrastructure

Regionally significant infrastructure includes:

- pipelines for the distribution or transmission of natural or manufactured gas or petroleum, including any associated fittings, appurtenances, fixtures or equipment
- a network operated for the purposes of telecommunications, as defined in section 5 of the Telecommunications Act 2001
- a network operated for the purpose of radiocommunications, as defined in section 2(1) of the Radio Communications Act 1989
- the *National Grid*
- facilities for the generation and/or transmission of electricity where it is supplied to the *National Grid* and/or the local distribution network
- facilities for the electricity distribution network, where it is 11kV and above. This excludes private connections to the local distribution network
- the local authority water supply network (including intake structures) and water treatment plants
- the local authority wastewater and stormwater networks and systems, including treatment plants and storage and discharge facilities
- the *Strategic Transport Network* (including ancillary structures required to operate, maintain, upgrade and develop that network)
- The following local arterial routes: Masterton-Castlepoint Road, Blairlogie/Langdale/Homewood/Riversdale Road and Cape Palliser Road in Wairarapa, Tītahi Bay Road and Grays Road in Porirua, and Kāpiti Road, Marine Parade, Mazengarb Road, Te Moana Road, Akatārawa Road, Matatua Road, Rimu Road, Epiha Street, Paekakariki Hill Road, The Parade [Paekakariki] and The Esplanade [Raumati South] in Kāpiti
- Wellington City bus terminal and Wellington Railway Station terminus
- Wellington International Airport including all supporting navigational infrastructure including its infrastructure and any buildings, installations, and equipment required to operate, maintain, upgrade and develop the airport located on, or adjacent to any such area, land and water used in connection with the airport or its administration.

This includes infrastructure, buildings, installations and equipment not located on airport land.

- Masterton Hood Aerodrome
- Kapiti Coast Airport
- Commercial Port Areas and infrastructure associated with Port related activities ~~in the Lambton Harbour Area~~ within Wellington Harbour (Port Nicholson) and adjacent land used in association with the movement of cargo and passengers, ~~and~~ including bulk fuel supply infrastructure, and storage tanks for bulk liquids, and associated wharflines
- Silverstream, Spicer and Southern landfills

**Annexure B – Greater Wellington Regional Council PC to the RPS, Hearing Stream 6
Expert Planning Witness Conferencing Statement.**

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

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 ~~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~~ appropriate, 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.

Annexure C – Greater Wellington Regional Council Natural Resource Plan Extracts.

- (c) where adverse effects cannot be **minimised**, they are remedied where practicable, and
- (d) where **residual adverse effects** cannot be avoided, **minimised**, or remedied, **offsetting** is provided where possible.

Proposals for **biodiversity mitigation** and **biodiversity offsetting** will be assessed against the principles listed in Schedule G1 (biodiversity mitigation), and Schedule G2 (biodiversity offsetting). A precautionary approach shall be used when assessing the potential for adverse effects on outstanding water bodies.

Where more than minor adverse effects on outstanding water bodies cannot be avoided, **minimised**, remedied or redressed through **biodiversity offsets**, the activity is inappropriate.

4.7.2 Managing adverse effects on indigenous biodiversity within the coastal environment

Policy P38: Indigenous biodiversity values within the coastal environment





To protect the indigenous biodiversity values, use and development within the coastal environment shall:

- (a) avoid adverse effects on indigenous biodiversity values that meet the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement (NZCPS) namely:
 - (i) indigenous taxa listed as threatened or at risk in the NZ Threat classification system lists or as threatened by the International Union for Conservation of Nature and Natural Resources;
 - (ii) indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare;
 - (iii) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
 - (iv) areas in the coastal environment containing nationally significant examples of indigenous community types;
 - (v) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (b) avoid significant adverse effects, on indigenous biodiversity values that meet the criteria in Policy 11(b) (i) – (vi) of the NZCPS, and

- (c) manage non-significant adverse effects of activities on indigenous biodiversity values that meet the criteria in Policy 11(b) of the NZCPS by:
- (i) avoiding adverse effects where practicable, and
 - (ii) where adverse effects cannot be avoided, **minimising** them where practicable, and
 - (iii) where adverse effects cannot be **minimised** they are remedied where practicable, and
 - (iv) where **residual adverse effects** cannot be avoided, **minimised**, or remedied, **biodiversity offsetting** is provided where possible, and
 - (v) 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
 - (vi) the activity itself is avoided if **biodiversity compensation** cannot be undertaken in a way that is appropriate as set out in Schedule G3, including Clause 2 of that schedule, and
- (d) for all other sites within the coastal environment not meeting Policy 11(a) or (b) of the NZCPS, manage significant adverse effects on indigenous biodiversity values using the effects management hierarchy set out in (b) to (g) of Policy P32.

Note

Any site or habitat in the Wellington Region known to meet NZCPS Policy 11(a) criteria is shown in the NRP Schedules by this icon 

Policy P39: Existing Regionally Significant Infrastructure and renewable energy generation activities within a site that meets any of the criteria in Policy P38(a)(i) - (v) or (b) or included in Schedule F5 

Consider providing for the operation, maintenance, **upgrade** and **extension** of existing **Regionally Significant Infrastructure** and **renewable energy generation activities** within a site in the coastal environment that meets any of the criteria in Policy P38(a)(i) - (v) or (b) or included in Schedule F5 where:

- (a) there is a **functional need** or **operational requirement** for the activity to locate in that area, and
- (b) there is no practicable alternative on land or elsewhere in the coastal environment for the activity to be located, and

- (c) 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**.

Policy P40: Kaiwharawhara Stream Estuary



When considering the effects of **port related activities** in the Kaiwharawhara Stream Estuary in Schedule F4 (which includes aquatic ecosystems, habitats, species and areas listed in Policy P38(a)(i) - (v) or (b)) or included in Schedule F5 recognise:

- (a) that the estuary is located within a working port that needs to provide for efficient and safe operations, the development of capacity for shipping and take account of connections to other transport modes, and
- (b) that there must be a **functional need** or **operational requirement** for the activity to locate in that area and there is no practicable alternative on land or elsewhere in the coastal marine area for the activity to be located, and
- (c) the extent to which the significant indigenous biodiversity values and attributes at and in proximity to the estuary, are enhanced or restored as part of a biodiversity management plan that sets out how the significant indigenous biodiversity values and attributes will be affected by the activity, and
- (d) the matters in Policy P39.

Policy P41: Wellington Airport South Coastal Environment



When considering the effects of airport related activities within a site that meets any of the criteria in Policy P38(a)(i) – (v) or (b) or included in Schedule F5 recognise:

- (a) that the existing airport is located in the coastal environment and the airport needs to provide for its efficient and safe operations, and the development of capacity to sustain the potential of the airport to meet the reasonably foreseeable needs of future generations, and
- (b) that there must be a **functional need** or **operational requirement** for the activity to locate in that area and there is no practicable alternative on land or elsewhere in the coastal marine area for the activity to be located, and
- (c) the extent to which any significant indigenous biodiversity values and attributes are enhanced or restored as part of a biodiversity

management plan that sets out how the significant indigenous biodiversity values and attributes will be affected by the activity, and

- (d) the matters in Policy P39.

4.7.3 Sites with significant indigenous biodiversity value

Policy P42: Ecosystems and habitats with significant indigenous biodiversity values



Protect in accordance with Policy P31 and Policies P38-P41 and, where appropriate, restore the following ecosystems and habitats with significant indigenous biodiversity values:

- (a) the rivers and lakes with significant indigenous ecosystems identified in Schedule F1 (rivers/lakes), and
- (b) the habitats for indigenous birds identified in Schedule F2 (bird habitats), and
- (c) **natural wetlands**, including the **natural wetlands** identified in Schedule F3 (identified **natural wetlands**), and
- (d) the ecosystems and habitat-types with significant indigenous biodiversity values in the coastal marine area identified in Schedule F4 (coastal sites) and Schedule F5 (coastal habitats).

Note

All **natural wetlands** in the Wellington Region are considered to be ecosystems and habitats with significant indigenous biodiversity values as they meet at least two of the criteria listed in Policy 23 of the Regional Policy Statement 2013 for identifying indigenous ecosystems and habitats with significant indigenous biodiversity values; being representativeness and rarity.

Policy P43: Effects on the spawning and migration of indigenous fish species

Avoid more than minor adverse effects of activities on indigenous fish species known to be present in any water body identified in Schedule F1 (rivers/lakes) as habitat for indigenous fish species or Schedule F1b (inanga spawning habitats), during known spawning and migration times identified in Schedule F1a (fish spawning/migration). These activities may include the following:

- (a) discharges of contaminants, including sediment, and
- (b) disturbance of the bed or banks that would affect spawning habitat at peak times of the year, and
- (c) damming, diversion or taking of water which leads to loss of flow or which makes the river impassable to migrating indigenous fish.