Introduction

Kia ora koutou katoa,

Ko maungakiekie te maunga te rū nei taku ngākau

Ko Raukawa te moana e mahea nei aku māharahara

I tipu ake au ki Tāmaki Makaurau

E mihi ana ki ngā tohu o nehe, o Te Whanganui-a-tara e noho nei au

Ko Curzon-Hobson tōku whanau

Ko George Curzon-Hobson toku ingoa

Ko tēnei taku mihi ki ngā tāngata whenua o te rohe nei. Ka mihi hoki au ki ngā tohu o te rohe nei

Nō reira, tēnā koutou katoa

INTRODUCTION

Good afternoon—my name is George Curzon-Hobson, and I am here on behalf of the Wellington City Council Environmental Reference Group.

By way of background, I am the biodiversity lead for the WCC Environmental Reference Group. I am a fourth-year law student at Te Herenga Waka—Victoria University of Wellington. I have been involved with environmental mahi since I was eleven, in a variety of both practical and policy work from local to national levels.

The WCC Environmental Reference Group exists to advise Council on the best ways to improve Wellingtonian's quality of life environmentally, socially, culturally and economically by protecting and enhancing the local environment. It is comprised of members from diverse backgrounds across a variety of disciplines. We provide input to Council officers throughout the lifecycle of projects, as well as engaging in formal submissions processes, like this.

I intend to spend my time today by making some introductory remarks, and then—perhaps unsurprisingly—turning to the issue of SNAs on residentially-zoned land. I will of course leave time for questions at the end, were there to be any; however, please do feel free to interject throughout. I have spent much of this year competing in moot court, so the notion that I could get through an oral submission without interruptions is somewhat foreign!

Introductory remarks

The thrust of the submission from ERG is that it is far past time for the pendulum to swing back towards environmental protection.

Unquestionably, biodiversity in Aotearoa New Zealand is in serious trouble. I won't recite the statistics, but as I am sure you know, they make for dire reading. Indeed, Wellington City Council has declared a climate and an ecological emergency. That is the context within which this District Plan sits.

Of course, Wellington is slightly unique—as a city, through enormous efforts especially from members of the community, it is doing better than most; we are both world and nation-leading when it comes to biodiversity protection. We deserve a District Plan that supports, furthers, and facilitates that position; not one that undercuts it.

As a young person, I bring a slightly unique perspective to this conversation. I am scared. My friends are scared. To us, the emergency declared by the Council are not merely interesting political decisions; they are quite literally our lives and our futures. A skim of any reports from the intergovernmental panel on climate change paint an extremely bleak picture of the next 50 or 100 years. As such, we deserve a progressive, environmentally centred district plan.

Now, acknowledging that this is principally a legal process and rhetoric will only take me so far, I want to turn to the issue of SNAs.

SNAs on residentially zoned land

BACKGROUND

I am sure I don't need to remind you of the effect of amendment 10B which removed from the Proposed District Plan Significant Natural Areas on residential zoned land.

It is ERG's very strong view that these SNAs should be brought back into the District Plan. There are obvious environmental benefits. But perhaps most significantly, the Council—as we see it—is in fact under a legal obligation to do so.

SECTION 42A REPORT

In his s 42A report, Mr McCutcheon traverses the relevant law—including the RMA itself, as well as the national policy statement on indigenous biodiversity, and the regional policy statement, both of which the Council is required to give effect to (RMA, s 75(3)). He concludes that national and regional direction requires SNAs be identified on residential zoned land, and there is no 'out' to this requirement (at [201]).

So far so good.

But, despite that, he does not recommend identifying SNAs on residential zoned land in this hearing process (at [201]). This is where we depart from the approach of Mr McCutcheon.

He identifies three reasons why these SNAs should not be identified: natural justice, a bill seeking to amend the RMA, and economic implications. I want to address each in turn and explain why we disagree.

NATURAL JUSTICE

As I understand it, natural justice is really the underpinning Mr McCutcheon's recommendation. He says that that "it is unreasonable … to expect [affected] landowners to have made a submission on the PDP" because "the issue for them had been dealt with conclusively at the time of notification as a result of" amendment 10b (at [204]). Thus, identification of SNAs on residentially zoned land should follow a separate RMA plan change process in the future (at [205]).

In our view, this doesn't stack up. The Council has an obligation to identify these SNAs. Therefore, it must do so. There is, as far as I am aware, no legal basis for general considerations of natural justice to triumph over statutory obligations.

Scope

The Council's legal submissions note that "in the vast majority of cases, assertions of a lack of natural justice can be answered by reference to applying the principles developed by the courts in relation to 'scope'" (at [4.3]).

Plainly, identifying SNAs on residentially zoned land is within scope.

- F&B legal submissions at [45]
- Council legal submissions at [4.4]

As Kós J put it in the *Motor Machinists* case (at [82]), "to override the reasonable interests of people and communities by a submissional side-wind would not be robust, sustainable management of natural resources". Or in the language of William Young J in *Clearwater*, a submission will be out of scope where it advances a proposition "out of left field" (at [69]).

The submission that SNAs be identified on residential zoned land, as they were until the eleventh-hour amendment 10B, is not a "submissional side-wind", nor is it "out of left field".

General natural justice considerations

The Council's legal submissions then at [4.4] go on to say that, despite the amendment sought being in scope, it may still be legitimate to consider issues of natural justice—seemingly in the way Mr McCutcheon suggests.

We agree with Forest & Bird at [45]–[46] that this submission is untenable, for the reasons they give.

And also, if this argument is expanded to its logical end point, it would mean that any Council can legitimately disregard a statutory requirement by: (1) deciding not to give effect to it in their proposed district plan, and then (2) arguing that giving effect to it later in the hearing process would be contrary to natural justice.

I admit that resource management law is often nebulous, and I frequently find it somewhat confounding, but that surely cannot be right.

One could perhaps analogise to the slightly—but not enormously—different doctrine of legitimate expectation, where the courts have said that "when a public authority has promised to follow a certain procedure, it is in the interest of good administration that it should act fairly and should implement its promise, so long as implementation does not interfere with its statutory duty" (*AG of Hong Kong* as cited in, for example, *Everton Heights Ltd* (NZHC, 2023) at [157]).

Such a principle appears apt here too.

AMENDMENT BILL

The second of Mr McCutcheon's reasons is the Resource Management (Freshwater and Other Matters) Amendment Bill (at [207]–[209]). He notes that any extension of SNAs would fall foul of s 78(5) (at [208]).

I will make two points in response, but the first is the most important: the Bill is not the law.

Indeed, Mr McCutcheon notes earlier (at [134]) that "until such time as the Amendment Bill is enacted into law, neither I nor the IHP can take steps to implement any proposed amendments" and (at [135]) "until such time … the NPSIB continues to apply".

The Council's legal submissions also rightly point out (at [3.7]) that whether the Amendment Bill "is a matter for the Panel to be conscious of … will depend on when the Bill receives Royal assent (if it progresses at all)".

The Bill has not received Royal assent.

Secondly, the Bill only affects the obligation to identify SNAs under the NPSIB

Section 78(4) would expressly preserve requirements under other provisions of the Act relating to indigenous biodiversity. Front of mind surely must be the obligation under s 75(3)(c) to give effect to the RPS, which itself requires these SNAs be identified.

Mr McCutcheon adverts to this point at [131], but appears to give it little weight in his ultimate assessment of whether or not these SNAs should be identified.

ECONOMIC IMPLICATIONS

Finally, Mr McCutcheon notes the research of David Norman which concluded that "the public benefits of residentially zoned SNAs are unlikely to outweigh the costs borne by individual residential landowners" (at [212]).

In our view, this is simply a non-starter, for precisely the reason Mr McCutcheon recognises in the very next paragraph: "loss of property value, whether actual or perceived, is not a valid reason preventing the inclusion of SNAs on residential land".

The potential economic implications of giving effect to a statutory obligation cannot be a relevant factor in deciding whether to give effect to a statutory obligation, because no such discretion exists.

Parliament makes laws, and in so doing, it considers the costs and the benefits. It is just simply not up to local decision-makers to determine for themselves whether it is worth it to do what they have to by law.

I also have to quarrel somewhat with the premise of the economic analysis

Mr Norman—as I understand his research, and I freely acknowledge my lack of economic credentials—determines whether SNAs are 'worth it' by asking whether the dollar amount that Wellingtonians would be willing to pay for the benefits of SNAs outweighs the costs that they will bear.

While I have no doubt that such an approach is economically sound, I fear it misses the mark somewhat when we are talking about native species. Surely we have to look beyond dollars and cents when assessing the "value" of SNAs?

We have a moral obligation to take—I think urgent—steps to conserve the species plunged into decline by *our own* actions. This obligation is not, and should not be viewed as, contingent on whether we can balance the cheque book whilst taking these steps.

We can't neglect that duty because it isn't making us as a society richer.

Economist Herman E Daly once said that "the economy is a wholly owned subsidiary of the environment, not the reverse."

We need to protect our environment. Identifying SNAs on residential land is but one small step in the right direction.

Conclusion

Nō reira tēnā koutou, tēnā koutou, tēnā koutou katoa

Thank you very much for your time this afternoon—I am very happy to take questions if there are any.