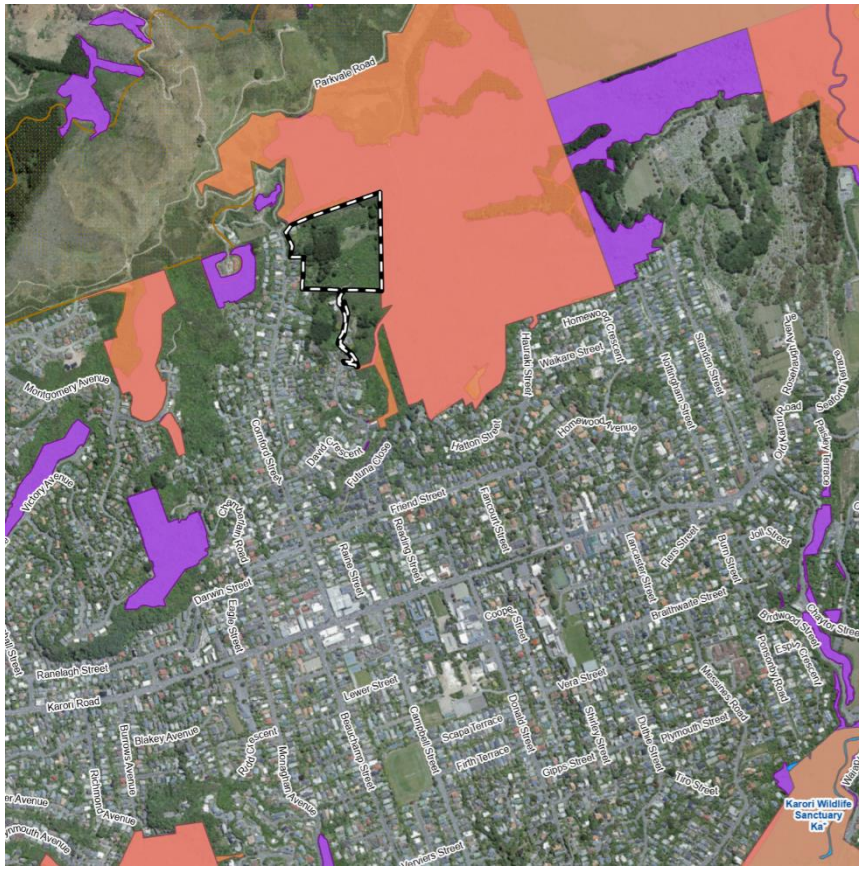
Peter Kelly Independent Hearing Panel presentation, stream 11, 13 September 2024



1. I have a direct interest in the SNA provisions, as I live in and am a trustee-owner of 170 Parkvale Road, which is 47,734m2 of medium density residential zoned land in Karori.

2. I have a broader interest as someone interested in housing policy and a legal practitioner working with planning matters; broadly speaking a YIMBY.

3. My primary submission is that support excluding privately owned residentially zoned land from SNAs, but I have a number of related submissions.

4. My first alternative submission is set out in my written submission. If the IHP is minded to reintroduce SNAs in privately owned residential zoned land, it should respect the democratic vote taken on Cr Matthews' (passed) amendment to the SNA rules taken at the 23 June 2022 Planning and Environment Committee meeting, as recorded on pages 7-11 of the minute of that meeting. That was less radical than the Mayor's later amendment removing all SNA designations from privately residential land. Specially, that included minimising rather than avoiding vegetation loss within SNAs in the context of residential subdivision and earthworks, and increased the building-to-SNA-boundary radius.

5. My second alternative submission is also set out in my written submission, and relates to a specific 956 m2 area that was earlier designated as SNA on 170 Parkvale Road. The Property Economics 'Economic Memorandum' that forms part of the background material for this stream indicates that Council are still maintaining the list of 'shadow SNAs': that is, "areas with the urban area which they believe would be appropriate for an SNA overlay", but that information has only been

published in the PE report, and as the graphic illustrates is not at a resolution that allows detailed understanding. This poses obvious natural justice problems if that work were then relied on by the IHP.

6. My next submission is a reply to what I see as the first “back door” proposal to achieve the same environmental/NIMBY outcomes as SNAs in residential areas, but at huge cost. That is, *"Forest & Bird seeks to address [the removal of SNAs in residential areas] by adding the requirement to consider areas that meet the significance criteria as if they were SNAs."* This is the amendment proposed at paragraph 57 of the Forest & Bird legal submission: that “every time SNAs are mentioned in objectives, policies and rules, the words 'or an area meeting the criteria for significance in Policy 23 of the Wellington Regional Policy Statement’ are added.

Figure 1 Shadow SNAs in Property Economics report: “Council has however assessed the areas within the urban areas which they believe would be appropriate for a SNA overlay if it were to be included in the plan."

7. The effect of this change would be catastrophic for development, because it would necessitate a huge increase in ecological assessments. The market for ecological assessments is already extremely tight, with leading suppliers such as Wildlands having long queues. There is not a large body of unemployed terrestrial ecologists who can be deployed to perform these assessments. The result would be all the downsides of including SNAs in residential areas, but without the benefits that come from scheduling matters that must be considered.

8. Identifying sites as significant natural areas in Schedule 8 of the Plan, rather than requiring a case-by-case assessment against the WRC Policy 23 criteria, has real benefits. It makes the planning instruments accessible, and reduces the chance of capital being wasted, when people buy land which they intend to develop but later find they cannot. Planning instruments operate in a hierarchy and are designed to create certainty and promote efficient processing of consents.

Adding this vague language would be counter to that purpose. WCC has already paid Wildlands to do the survey of SNAs for the WCC area. It would be hugely inefficient to require each project to commission new ecological assessments.

9. Capturing the significant areas as at a certain date (as WCC has always envisaged) has far better incentive outcomes. There are two key issues here:

    a. With Forest and Bird's proposal, landowners would have the incentive to degrade their land in the period running up to a consent application, because the significance criteria would be assessed at the time of application (see [386] of the s 42A report – the rule would "act perversely"); and

    b. The inclusion of tangata whenua values, while entirely appropriate for a one-off exercise by the Wellington City Council, is deeply problematic at the level of individual consents. There would be an incentive for strategic behaviour, where tangata whenua values that would not have been identified under the Territorial Authority level engagement are surfaced in site-by-site consultation. Essentially, the proposal could have the effect of requiring each landowner seeking a consent to negotiate a development license from local tangata whenua.

10. My submission is that the Forest and Bird proposals in their legal submission should be rejected, although I have no position on their submission at [61].

11. The second backdoor attempt to reintroduce SNAs is found at [403] of the s 42A report, and makes removal of more than 100m2 of indigenous vegetation in a residential area a controlled activity. I submit that no specific vegetation clearance rules outside SNAs are required as WRC has rules already. The s 42A proposed ECO-R4 rule is radical and unexpected. It is justified on the basis of existing practice *in conjunction with consent applications* (at [366]), but would apply on a freestanding basis and prevent people's normal usage of their land even if they had no development planned. The proposed rules would create an immediate "clear it or lose it" situation on residential zoned land, which is completely perverse and an illegitimate imposition at this stage of the plan development process.