

**BEFORE A PANEL OF INDEPENDENT HEARING COMMISSIONERS
AT WELLINGTON**

UNDER the Resource Management Act 1991
AND
IN THE MATTER of the Wellington City proposed District Plan

**SUBMISSION OF STEVE WEST AS AN INDIVIDUAL
WELLINGTON CITY PROPOSED DISTRICT PLAN
Hearings stream 11 – Ecosystems and Indigenous Biodiversity**

21 August 2024

Introduction

1. My name is Steve West. I have lived in Wellington since 1989 and these days live with my partner in our family home, located in the Harbour Lights subdivision, Ngaio.
2. I have an engineering qualification and provide consultancy services on energy sector issues including supply and distribution of transport fuels, and the fuels transition.
3. Like many households, we seek to minimise our waste, recycle where possible, and use a mix of transport modes including walking, public transport and our EV.
4. We are foundation members of Zealandia (formally the Karori Wildlife Sanctuary) and are active predator free trappers, with four traps operating on our property.
5. We learnt about the intention of Wellington City Council (WCC) to make about 40% of our property a Significant Natural Area (SNA) via letter in August 2019 (Appendix 1).

Summary of the relief sought in my submission

6. In summary, I am seeking that:
 - a. Number 9 Captain Edward Daniell Drive (9 CEDD) remains excluded from the list of SNAs in the District Plan, noting that:
 - i. prior to subdivision our land was part of a poultry farm, hence the native bush now found was largely non-existent 50 years ago;
 - ii. none of the native plants identified on our property are listed as being under threat; and
 - iii. this land is already protected with a covenant on the land title that contains conservation obligations (Appendix 5).
 - b. The whole Harbour Lights subdivision remains excluded from the list of SNAs in the District Plan, for the same reasons as outlined in point 6.a.
 - c. The Independent Hearings Panel (IHP) rejects the relief sought by some submitters (including those listed in point 17) to reinstate private residential SNAs in the District Plan, noting that:
 - i. WCC has already decided the notified proposed District Plan would exclude private residential SNAs;
 - ii. reinstating private residential SNAs would preclude landowners from making a further submission to WCC or the IHP on this matter; and

- iii. reinstating private residential SNAs, without providing opportunity for further submissions, raises questions of natural justice for landowners who should reasonably expect to be given the opportunity to be heard.
- d. If the IHP decides to reinstate private residential SNAs, that it:
 - i. rejects the previous rules from the draft District Plan, as these would impose a heavy and unreasonable burden on those landowners;
 - ii. in consultation with WCC and landowner representatives, identify new, and more practicable rules for private residential SNAs, with guiding principles such as;
 - ensuring environmental protection does not hinder or add undue cost for ordinary maintenance the landowner might do;
 - encouraging planting and restoration of indigenous biodiversity, without creating unnecessary financial or legal burden; and
 - developing a better relationship and goodwill between WCC and landowners.
 - iii. Limit any rules for private residential SNAs to land that is not already protected by some other method, such as a QEII or land title covenant.

SNA demographics

7. A comparison of private residential SNAs versus other SNAs for Wellington is provided in Table 1. Of note is the sizeable asymmetry between land parcels and land area.¹

Table 1: Comparison of the number and land area for SNAs

	Property parcels		Land area	
	Number	Percentage	Hectares	Percentage
Private residential SNAs ²	1,343	74.0%	283	5.4%
Other SNA areas	472	26.0%	4,957	94.6%
Total SNAs	1,815	100.0%	5,240	100.0%

8. Table 1 shows private residential SNA landowners make up 74% of the total pool of SNA landowners, but only account for 5.4% of the total area of identified SNAs.

¹ Submission data came from LGOIMA requests, but this table is updated with data from the Significant Natural Areas Section 32 Economic Assessment Indigenous Biodiversity Report by GHD

² These include both private residential and private future urban properties

9. The GHD Report¹ also explains that SNAs (in total) would cover 18.1% of Wellington’s total land area, which is sizeable given the compactness of Wellington City.
10. My analysis shows that even if excluding private residential SNAs resulted in a 20% reduction to those SNAs (which as explained in points 19 to 25 would be unlikely given the voluntary conservation efforts city wide) the impact on the total SNAs, in my opinion would be de minimis with 99% of the total SNA area retained.
11. This context is important when considering the issue of whether to include SNAs on private residential land in the District Plan.

Status of SNAs in the proposed District Plan

12. On 27 June 2022 the WCC Planning and Environment Committee decided that SNAs on private residential land would be excluded from the proposed District Plan.
13. Specifically, the Committee decided for SNAs on residential properties that:
 - a. these be removed from the notified District Plan until the National Policy Statement on Indigenous Biodiversity (NPS-IB) has been gazetted and a SNA incentives programme developed and considered by Council; and
 - b. that a ‘significant natural areas incentives programme’ be considered as part of the 2023/24 Annual Plan, to assist affected landowners with the protection of these ecologically important areas.
14. While the NPS-IB was gazetted on 31 May 2023, no progress has been made on the programme described in point 13.b. And in its 2024/34 Long Term Plan WCC stated:

“Any new SNA identification in the district plan will likely not happen until after the adoption of the 2024/34 Long-term Plan. Therefore, this is not an appropriate time to consider rating policy implications.”
15. Furthermore, the requirement for councils to comply with the SNA provisions in the NPS-IB is to be suspended for three years while Government replaces the Resource Management Act (RMA).³
16. Given the uncertainties raised in points 14 and 15, and the impact of this uncertainty on landowners, this adds further weight to the argument for maintaining the status quo, that is for private residential SNAs to remain excluded from the District Plan.

³ [Significant Natural Areas requirement to be suspended | Beehive.govt.nz](https://www.beehive.govt.nz/significant-natural-areas-requirement-to-be-suspended)

Submissions seeking residential SNAs be reinstated

17. Several submitters on the proposed District Plan are seeking the reinstatement of the private residential SNAs, including:
- a. **Greater Wellington Regional Council (GWRC):** who seeks reinstatement of these SNAs to align with the RMA⁴ and its Regional Policy Statement (RPS)⁵.
 - b. **The Royal Forest and Bird Protection Society (Forest & Bird):** who contend these SNAs are necessary for compliance with the RMA⁴ and the RPS⁵, or that alternative rules would be needed to protect indigenous biodiversity.
 - c. **Director-General of Conservation:** who opposes these SNAs being excluded, emphasizing RMA⁴ and RPS⁵ requirements, and recommends ground truthing to accurately identify and delineate SNAs.
 - d. **WCC Environmental Reference Group (WCC-ERG):** who seeks reinstatement of these SNAs, citing their exclusion is contradictory to the RMA⁴ and the RPS⁵.
 - e. **Tyers Stream Group:** who wants the SNAs adjoining Tyers Stream reinstated as they protect increasingly important habitat and biodiversity in Wellington.
 - f. **Others:** Expressing disappointment about these SNAs being excluded, citing concerns this may lead to damage, or even clear-felling of these areas.⁶
18. I respond to the key points raised by these submitters in points 19 to 47.

Impact of excluding private residential SNAs

19. An argument put forward, including by those listed in point 17, is that excluding private residential SNAs has, or will, weaken indigenous biodiversity outcomes for Wellington, with some suggesting that without these SNAs, biodiversity will diminish.
20. Before the proposed District Plan was notified in 2022 there were no listed SNAs in Wellington, and even now private residential land remains excluded. This is pertinent to the discussion, in that if the arguments put forward by submitters were true, then without these required SNAs Wellington's indigenous biodiversity must be in decline.
21. Whereas in Wellington indigenous biodiversity has increased significantly over the last 20 years.

⁴ And in particular Section 6(c) of the RMA

⁵ And in particular Policies 23 and 24

⁶ This includes Vic Labour, and Chris Horne, Sunita Singh, Julia Stace, Paul Bell-Butler

22. In fact as reported by WCC in its 2023 news release⁷

“a recent survey shows no native birds are seriously at risk in the capital anymore, and regionally bird numbers are soaring sky high”.

23. This aligns with our own experience at Harbour Lights where flocks of kākā are now commonplace, in addition to many tūi, kererū, riroriro and pīwakawaka.

24. The fact that Wellington’s indigenous biodiversity has increased substantially over the last 20 years, without the existence of SNAs, reflects well on the strong voluntary conservation efforts citywide, in addition to Zealandia and programs like Predator Free Wellington and Capital Kiwi.

25. Of course the positive outcome for Wellington’s flora and fauna, as described in point 24, completely dismisses the notion for requiring SNAs to stop biodiversity decline.

SNA assessment criteria

26. The identification of SNAs for the proposed District Plan have used the RPS criteria. However, these criteria, and in particular the ‘representativeness’ criterion, have seen large areas of commonly found bush become a SNA. To explain:

- a. Wellington is part of the MF6 ecosystem⁸, which is described as a kohekohe and tawa forest with only 16% remaining, with kawakawa, māhoe, nikau and supplejack also found in this ecosystem;
- b. the RPS representativeness criteria requires that where the ecosystem is no longer commonplace (defined as being less than 30% remaining) for this remanent bush to be considered significant; and
- c. as a result large parcels of Wellington land (including in the Harbour Lights subdivision) with few notable features have been identified as a SNA due to the presence of commonly found natives such as māhoe, despite the lack of any kohekohe or tawa which forms the primary basis of this MF6 ecosystem.

27. Furthermore, Wellington is a compact city of around 29,000 hectares. About 40% of the area is considered to be urban, compared to the regional average of around 25%. Yet despite this variance the RPS does not differentiate the representativeness criteria for Wellington City to reflect its greater proportion of urban land.

⁷ [The sky’s the limit for bird free from the danger zone - News and information - Wellington City Council](#)

⁸ Forest Ecosystems of the Wellington Region | December 2018 | GWRC

28. In my opinion the use of a flat 30% measure for the representativeness criteria in the RPS is wrong, and this may have seen land in Wellington wrongly classified as a SNA. Prorating the 30% figure to reflect Wellington's higher proportion of urban land would suggest a figure around 18% for representativeness would be more reasonable.
29. In my submission I am seeking for WCC to apply its own (more appropriate) criteria when assessing for SNAs in Wellington.

Ground truthing and SNA boundaries

30. The Director-General of Conservation in its submission (point 17.c) highlights the need for WCC to undertake ground truthing to confirm the status and boundary for SNAs.
31. I agree that WCC must correctly identify SNAs through ground truthing. As an example, for 9 CEDD (as explained in points 53 to 56, and as shown on the map in Appendix 2) ground truthing led to the removal of a large area of blackberry, old man's beard and vineland from the proposed (and still disputed) SNA area.
32. In the WCC Section 42 Report⁹ (point 225) Mr McCutcheon asks for more information on my concerns about accuracy of SNA boundaries. To explain, I refer to the SNA map for 9 CEDD in Appendix 2, which shows:
 - a. the SNA boundary as it passes through 9 CEDD, in part following the area of blackberry (now eradicated) before more generally following the private road;
 - b. while not obvious from the aerial map, the terrain in this area is very steep;
 - c. unlike the property boundary, which is clearly defined (and in our case marked with boundary pegs) the SNA boundary randomly follows various trees; and
 - d. as a result it will be challenging (once the old blackberry area is replanted and established) to precisely identify the SNA boundary line.
33. SNAs will create legal risk for landowners, which is why my submission seeks for WCC to provide accurate cadastral markings of these SNA boundaries.

Alternatives to SNAs

34. The RMA and RPS provide a framework for protecting indigenous biodiversity, but neither prescribe in detail how a council might give effect to the requirement to protect areas of significant indigenous vegetation and significant habitats of indigenous fauna.

⁹ WCC Section 42A Report | Hearing Stream 11 - Ecosystems and Indigenous Biodiversity

35. Useful to this discussion is the 2015 Environment Court case between Forest & Bird and the New Plymouth District Council, where the Court concluded Councils might conceivably meet RMA Section 6(c) duties through methods other than identification and rules, but in this case the non-regulatory methods relied on by the Council were insufficient to provide protection.
36. In any case, the use of alternative methods for complying with the RMA and RPS was acknowledged by Forest & Bird in their submission when seeking reinstatement of private residential SNAs, where they comment that:
- “if this is not done, there will need to be alternative rule(s) to protect significant biodiversity in residential areas, that still meets the requirements of the Act”*
37. The implied premise by some submitters, including those listed in point 17, is that by reinstating private residential SNAs better biodiversity outcomes will follow.
38. Whereas (as outlined in point 24) Wellington’s indigenous biodiversity has increased substantially over the last 20 years via voluntary conservation activities. And in my submission, I explain how establishing private residential SNAs will have unintended outcomes, including from:
- a. the crystallisation of land value losses of up to 30%¹⁰ for landowners;
 - b. pre-emptive removal of some native bush by landowners incensed by the private residential SNA proposal, as was the case in 2022;¹¹
 - c. avoided planting of natives to sidestep SNA policy impacts in future;
 - d. loss of goodwill with those who have been looking after their bush, but now face unreasonable costs and burden from the imposition of SNA rules; and
 - e. inability to undertake ordinary maintenance, like trimming a tree (which is often required to manage large trees on small urban plots) unless this is done by a works arborist and is underpinned by a resource consent and ecology report;¹²
39. In my opinion the use of alternative methods for complying with the RMA and RPS would provide better indigenous biodiversity outcomes for Wellington City. And in my submission, I list several ideas for alternative methods of compliance. The key points I wish to highlight from my submission are:

¹⁰ SNA implementation by WCC and the impact on property owners | Darroch 2019

¹¹ [Frustrated landowners cutting down trees to avoid environmental protection status | Stuff](#)

¹² The WCC Section 42A report indicates the cost for the consent and ecology report could be \$6,000

- a. permanently excluding private residential SNAs from the District Plan (instead relying on the general provisions for protecting biodiversity), along with a program to encourage city wide planting of natives so as to establish a broad spread of food city wide for our birds;
 - b. but if reinstated, that WCC should limit any rules for private residential SNAs to land that is not already protected by another method, like a QEII or land title covenant;
 - c. specifically for 9 CEDD that this remain excluded from Schedule 9 (if residential SNAs are reinstated) as this land is already protected with a covenant on the land title that contains conservation obligations (Appendix 5).
40. In my opinion creating private residential SNAs will make native bush an expensive and unwanted burden for many landowners. I see real risk of the biodiversity gains over the last two decades (including through voluntary conservation) diminishing, which is why I am seeking for private residential SNAs to remain excluded from the District Plan.

SNA rules in the District Plan

41. In their submissions GWRC and Forest & Bird seek additional SNA rules, including:
- a. identification of new SNAs, and for maintaining indigenous biodiversity in other (non-SNA) areas with controls such as buffer zones and ecological corridors;
 - b. inclusion of non-indigenous vegetation into the trimming standards, and for any trimming to be done by a Technician Arborist; and
 - c. amending the rules allowing landowners to create simple access tracks within the SNA, to make this a controlled activity.
42. I am concerned about how the rules, like the trimming standards, already place a heavy burden on landowners with these requiring a resource consent and an ecology report. Making the rules even more stringent, as proposed in point 41, will further magnify the impost on private landowners.
43. The amendments proposed in point 41 show little regard for how these rules might lead to less conservation activities on private residential SNAs.
44. Furthermore, given the cost and heavy burden that would arise from having a private residential SNA, I expect planting of new trees (both indigenous and exotic) within the urban environment would diminish over time.
45. Which is why I am seeking for any SNA rules imposed to be as minimal as practicable.

Compensation for SNAs

46. The WCC-ERG has suggested that WCC recognises and assists with the financial costs associated with protection and restoration initiatives incurred by landowners.
47. While I do not support private residential SNAs, if these are reinstated, I agree (and are seeking) that WCC should provide compensation to landowners, including:
 - a. rates relief to fully compensate for costs incurred with protecting the SNA;
 - b. covering resource consent and ecologist reports, where required to support ongoing maintenance of the SNA; and
 - c. full compensation (at time of sale) for loss of land value caused by the SNA.

Number 9 Captain Edward Daniell Drive, Harbour Lights

48. Our property at 9 CEDD is part of the Harbour Lights subdivision. Prior to subdivision, this land (on Old Porirua Road) was a poultry farm owned by Mr Golubyatnikoff.
49. In 1969 WCC declined a subdivision request from Mr Golubyatnikoff to build another farm cottage, as in 1967 the land was rezoned 'Residential A' in the District Scheme. This seems to be the genesis of subdividing the farm into residential lots.
50. A letter from Mr Golubyatnikoff in 1971 discussed upgrading Old Porirua Road to allow the farm to be subdivided and describes that if this was only partly subdividable the rest of the land would "*remain a waste piece of ground, overgrown with gorse and broom*".
51. A later 1997 vegetation document by WCC provides another snapshot, describing:
 - a. young regenerating bush on generally steep south facing hillside;
 - b. vegetation ranging from five to ten years old on the upper slopes of the property to vegetation in excess of fifty years maturity adjacent to the Old Porirua Road;
 - c. this land was probably grazed and only in the last few years had the opportunity to naturally regenerate; and
 - d. the native vegetation is in various early stages of succession and is typical of regeneration patterns seen over much of the remaining undeveloped land.
52. While there are substantial documents on 124 Old Porirua Road and the eventual Harbour Lights subdivision, the key points are that:
 - a. prior to subdivision the land was part of a poultry farm, hence the native bush now found was largely non-existent 50 years ago;

- b. lot 24 (~2.5 ha) was vested to WCC (this is now part of Odell Reserve); and
 - c. a conservation covenant was placed over the remaining subdivision lots.
53. In 2021 (at our request) WCC assessed 9 CEDD under what was known as Backyard Tāonga. The WCC letter that followed (Appendix 2) identified:
- a. 15 native plants within the proposed SNA, along with a large sycamore tree, sycamore seedlings, holly, ivy, tradescantia, and some blackberry;¹³
 - b. six native birds, although only Tūī were spotted during the site visit with the rest reported as having been seen by the landowner; and
 - c. the SNA boundary adjusted to exclude the area of dense blackberry.
54. The landowner report (Appendix 3) in response to this letter noted that:
- a. all but one of the native plants listed were not threatened nationally, and regionally none of the 15 plants identified were under threat;
 - b. five of the six native birds were not threatened, with the Kākā in recovery;
 - c. while 9 CEDD contained some commonly found natives, it would be difficult to conclude (against the RPS criteria) that this should be classified as a SNA; and
 - d. recommended 9 CEDD be excluded from the proposed SNA, noting that in any case the land is already protected with a conservation covenant.
55. For completeness the further response from Wildland Consultants has been included in Appendix 4. This concluded that for 9 CEDD:
- a. vegetation is māhoe dominated forest with rangiora, hangehange, kawakawa and other indigenous plants, so would trigger the representativeness criteria;
 - b. the māhoe-dominated forest is part of a complex of sites giving an important forested corridor to connect the town belt to Wellington Harbour; and
 - c. the area of māhoe-dominated forest at 9 CEDD is retained within SNA079.
56. While there have been subsequent email exchanges between WCC and us, there has been no resolution on whether the native bush at 9 CEDD is commonly found native bush, or if this should be a SNA.
57. In my submission I am seeking that 9 CEDD remains excluded from the list of SNAs in the District Plan.

¹³ The large sycamore tree and blackberry have now been removed, but the tradescantia is a work in progress.

Appendix 1

Over page is the initial letter (30 August 2019) from WCC outlining its intention to make part of 9 CEDD a SNA. The included map shows an indicative markup of the property boundary.

Dear Stephen and Deborah

We recently invited Wellingtonians to tell us what's important to them as we plan for growth and change over the next 30 years. One of the themes that came through strongly is how much people love our city's native bush and wildlife, and how important it is that we protect these special places.

With a big push on sustainability nationwide, taking steps to protect natural areas is part of a national requirement involving all councils. It is also something we can build into the District Plan, which is the blueprint for making sure our city grows in the right way.

We are writing because our work to identify and protect natural areas could affect you

We've been working with ecologists and landscape specialists to identify important areas of native bush and landscapes around the city. This is so we can start talking with landowners about what they might have, and ways we can help them look after it.

From what we can tell from the aerial mapping and assessment work, your property appears to fall into an area of land that has rare or endangered native species that are important to our city's biodiversity, or is part of a significant natural landscape. If there is something about the information we have though that doesn't look quite right, please give us a call. One of our ecologists will be more than happy to come and have a look and a chat about what you might have at your place.

As part of an overall District Plan review later next year, we will be asking people for their thoughts on how best to protect important native bush and landscapes. We especially want to work with landowners to find the right balance between protection and practical use - we don't want to introduce anything that gets in the way of day to day use and maintenance. We also want to know what we can do to help - that might be in the shape of pest control or native plants. It will be a case by case situation so we're keen to hear what would work best for you.

Working together

Taking extra care to protect the biodiversity of our city is good for everybody, and we're happy to help where we can. This is just the start of an engagement process with lots of opportunity to work things out.

If you'd like information or advice about what you've got, and ways to enhance it we'd love to hear from you. If you have any questions at all about the process and how to get involved, please just give us a call on 021 952 863 and we can talk it through. There is also lots of information at planningforgrowth.wellington.govt.nz

Kind regards,



David Chick
Chief City Planner

Rarangi wā
Timeline

Sept 2019
Talk and help

Late 2020
Draft District Plan
consultation

Late 2021
Proposed District Plan
consultation

Significant Natural Area Habitat with important indigenous value

WC079

Trellisick Park and Old Porirua Road forest remnants

Dominant habitat:

Forest and shrubland

Description

There are three large and two small areas of forest and scrub comprising extensive prime forest remnants along the Ngaio Gorge and Old Porirua Road. Kaiwharawhara Stream is home to indigenous threatened fish. Forest remnants are predominantly **tawa**, **rewarewa**, **hinau**, **totara**, **kahikatea** and **kohekohe**. You can also find titoki and matai along the ridge, as well as **wharangi**, **kowhai**, **northern rata**, **karaka** and **kanuka**. Bird life includes North Island **kaka**, **bushfalcon**, **red-crowned parakeet** and **whitehead**.

Also includes:

- Maidenhair fern
- Seven indigenous fish species



These maps are draft. Some boundaries may change based on feedback and further assessment. If you would like help to read them please call us on 021 952 836. Email backyardtaonga@wcc.govt.nz. For more information go to planningforgrowth.wellington.govt.nz

Appendix 2

Over page is the letter from WCC (18 June 2021) which provided a summary of findings from the Backyard Tāonga assessment of 9 CEDD. And below is the map referred to in the letter.



Steve and Deb West
9 Captain Edward Daniell Drive
Ngaio, 6035

18 June 2021

Dear Steve and Deb,

Backyard Tāonga Consultation

Thank you for allowing us to visit your property on Friday 19th March 2021 as part of the significant natural areas and landscapes consultation process.

Please see below a summary of findings from the site visit as well as an overview of the District Plan review process.

Site Visit Summary

Tim Johnstone (Principal Advisor, Place Planning Wellington City Council) and Keely Paler (Ecologist, Wildlands Ecological Consultants) undertook a site visit on Friday 19th March 2021.

While on site, we discussed and noted the following:

SNA

Vegetation within this SNA largely comprises māhoe forest with houhere, rangiora, akiraho, kawakawa, kōhūhū, kanono, māpou, kōtukutuku, hangehange, huruhuru whenua, hen and chicken fern, kōwaowao, akakaikiore and *Metrosideros diffusa*. A large sycamore tree and a number of sycamore seedlings occur within the SNA, as does holly, ivy, tradescantia and a small amount of blackberry. Indigenous species dominate.

An area along the driveway comprises blackberry-old man's beard vineland with bracken, tradescantia, montbretia and karo. A row of taupata, wharariki, koromiko, and tī kōuka are adjacent to the driveway, but these are likely the result of previous plantings.

Rarangi wā Timeline

Feb/March 2020
Spatial Plan feedback

Late 2021
Draft District Plan
consultation

Mid 2022
Proposed District Plan
consultation

Bird species recorded during the site visit include sparrow, blackbird and tūī. Other bird species reportedly include fantail, grey warbler, kākā, kererū, bellbird and Californian quail. Rabbits also occur within the forest area.

Vegetation on this property is representative of current, regenerating vegetation types. The site is part of a larger area which provides habitat for fauna and plays an important role connecting the Outer Town Belt to Wellington Harbour. Also provides riparian protection to Kaiwharawhara Stream.

Decision Taken

The proposed SNA boundary will be adjusted to exclude the area of blackberry-old man's beard vineland by the driveway. Please see the attached map.

District Plan Review Process

The Wellington District Plan is the main document that controls development and land use throughout the City. The District Plan also manages the environmental impacts of development and subdivision.

Wellington City Council will consult on a Draft District Plan in late 2021 and the significant natural areas and outstanding landscapes is part of this process. The Draft District Plan will include a Natural Environment chapter containing objectives, policies, rules and maps relating to the management of significant natural areas.

This Draft District Plan will be released for informal consultation and will have no legal effect until we formally notify the Proposed District Plan in mid-2022. You will be able to make formal submissions when the Proposed District Plan is notified and will have the opportunity to speak to your submission at a hearing.

If you have any further questions or comments about this process please contact us on backyardtaonga@wcc.govt.nz

Kind regards,

Backyard Tāonga team

Rarangi wā Timeline

Feb/March 2020
Spatial Plan feedback

Late 2021
Draft District Plan
consultation

Mid 2022
Proposed District Plan
consultation

Appendix 3

Over page is the landowner report that was provided in response to the Backyard Tāonga site visit and the WCC letter dated 18 June 2021 (Appendix 2).

SNA Assessment for 9 Captain Edward Daniell Drive

Landowner Report to the Wellington City Council

Steve West

7 July 2021

This report has been written by the landowners of 9 Captain Edward Daniell Drive (**9 CEDD**), in response to the Backyard Tāonga site visit on Friday 19 March 2021 and the associated letter (the **Letter**) from the Wellington City Council (**WCC**) dated 18 June 2021. Having reviewed the Letter, we disagree with the conclusions and decision reached by WCC; this report sets out why.

1. History of the property¹

The property is part of the Harbour Lights subdivision. Prior to this the land was known as 124 Old Porirua Road and was a poultry farm owned by Mr Golubyatnikoff. In 1969 he sought to subdivide a small portion of the land to build another farm cottage. However, this was declined by the WCC on 17 July 1969, in part because the land had been rezoned 'Residential A' in the District Scheme that was publicly notified in 1967.

This seems to be the genesis of subdividing the farm into residential lots. A letter from Mr Golubyatnikoff dated 26 November 1971 discusses issues such as Old Porirua Road needing upgrading for the farm to be subdividable and describes that if only part of the land was subdivided the rest "*would still remain a waste piece of ground, overgrown with gorse and broom*". In 1975 correspondence discussed 6.5 acres of the farm being set aside as passive reserve.

A much later WCC vegetation document dated 7 November 1997 provides another snapshot of the land at 124 Old Porirua Road, this is some 26 years later. Some excerpts from this report describes:

Young regenerating bush on generally steep south facing hillside overlooking the Ngaio Gorge.

Vegetation ranges from five to 10 years old on the upper slopes of the property to vegetation in excess of fifty years maturity adjacent to the Old Porirua Road at the southernmost boundary of the property.

Vegetation composition and association on the site appears to be typical of regenerating native bush in the Wellington City area.

This land was probably grazed and has only, in the last few years had the opportunity to naturally regenerate.

The native vegetation is in various early stages of succession. It is typical of regeneration patterns seen over much of the remaining undeveloped land within the Wellington City suburbs.

While there are substantial documents on 124 Old Porirua Road and the eventual Harbour Lights subdivision, the key points are:

- This land was a working poultry farm prior to the subdivision.
- Lot 24 of the subdivision (2.5333 ha) was vested to the WCC (and is now part of Odell Reserve).
- The creation of a conservation covenant over the remaining lots in the subdivision.

The native bush now found in the Harbour Lights subdivision largely did not exist 50 years ago, particularly for the land, like 9 CEDD, that is located further away from Old Porirua Road.

Under the subdivision process WCC has been able to extract substantial *environmental rents* from this privately held land and the latest proposal to place SNAs on this land will further add to the already significant contributions made and still being provided by landowners in the Harbour Lights subdivision.

¹ WCC archive documents for 124 Old Porirua Road

2. Site visit

This section details our comments and findings from the site visit discussions and statements in the Letter.

2.1. Existing conservation covenant

During the site visit the conservation covenant on 9 CEDD was discussed. This requires landowners to protect the conservation area within their boundary of the Harbour Lights subdivision. Concern was expressed about how these conservation obligations could contradict SNA obligations created under the District Plan, and if that were to eventuate how that could be costly for both parties to resolve.

The proposed SNA area for 9 CEDD is already protected by the conservation covenant.

2.2. Vegetation

The Letter lists 15 native plants found within the proposed SNA for 9 CEDD. The table below shows the conservation status for these at a national level and regionally for Wellington.

Species	DOC status ²	GWRC status ³	WCC status ⁴
Māhoe (whiteywood)	Not threatened	Not listed > ok	Not listed > ok
Houhere (lacebark)	Not threatened	Not listed > ok	Not listed > ok
Rangiora (bushman's friend)	Not threatened	Not listed > ok	Not listed > ok
Akiraho	Not threatened	Not listed > ok	Not listed > ok
Kawakawa	Not threatened	Not listed > ok	Not listed > ok
Kōhūhū (black matipo)	Not threatened	Not listed > ok	Not listed > ok
Kanono (coprosma autumnalis)	Not threatened	Not listed > ok	Not listed > ok
Māpou (red matipo)	Not threatened	Not listed > ok	Not listed > ok
Kōtukutuku (tree fuchsia)	Not threatened	Not listed > ok	Not listed > ok
Hangehange (New Zealand privet)	Not threatened	Not listed > ok	Not listed > ok
Huruhuru whenua (shining spleenwort)	Not threatened	Not listed > ok	Not listed > ok
Hen and chicken fern	Not threatened	Not listed > ok	Not listed > ok
Kōwaowao (hounds tongue fern)	Not threatened	Not listed > ok	Not listed > ok
Akakaikiore (native jasmine)	Not threatened	Not listed > ok	Not listed > ok
Metrosideros diffusa (white rata)	Nationally Vulnerable	Not listed > ok	Not listed > ok

This table shows that 14 of the native plants found are not listed as being threatened nationally, and at a regional level none of the identified plants were recorded as being under threat by the GWRC or WCC.

Also highlighted in the Letter was the large sycamore tree and several sycamore seedlings along with holly, ivy, tradescantia, and a small area of blackberry (we calculate this area to be approximately 80m²). WCC has now decided this area of blackberry and old man's beard should be removed from the proposed SNA.

2.3. Bird Species

The Letter lists 6 native birds, although only Tūi were spotted during the site visit with the rest reported as having been seen by the Landowner.

² Conservation Status of New Zealand indigenous vascular plants, 2017 | DOC

³ Conservation status of indigenous vascular plant species in the Wellington region, 2020 | GWRC

⁴ Our Natural Capital, 2015 | WCC

Species	DOC conservation status ⁵	Landowner comments
Tūī	Not threatened	Commonly heard and seen
Piwakawaka	Not threatened	Commonly seen
Grey warbler	Not threatened	Commonly heard and seen
Kākā	Recovering	Often heard and seen
Kererū	Not threatened	Commonly seen
Bellbird	Not threatened	Sometimes heard and seen

This table shows that in 2016 five of the six native birds reported were not considered to be threatened, with the Kākā now in recovery. More recently DOC describes *the conservation status of 23 land bird species improved between 2008 and 2019 as a result of population increases resulting mainly from conservation management.*⁶ This is consistent with our observations of increasing abundance of all birds in our area, but in particular the now regular sighting of Kākā and Kererū and the recent spotting of Bellbird in the area.

The strong uptake of predator free trapping will no doubt have played a significant part in supporting this outcome. The Letter did not mention the one predator free and three self-funded DOC-200 traps located on our land, although these were noted during the site visit.

2.4. Riparian protection

The Letter mentions riparian protection being provided to the Kaiwharawhara Stream. At its closest, 9 CEDD is ~295m away from the stream with the land intersected by Old Porirua Road and Kaiwharawhara Road. Our experience is that water runoff channels down Old Porirua Road to where it joins Kaiwharawhara Road.

A DOC report⁷ indicates riparian benefits could approach 100% at around two to three tree heights from a stream, which implies riparian benefits would likely be maximised at around 45m. So given the distance between 9 CEDD and Kaiwharawhara Stream and the two roads in between it is doubtful that this land is providing any meaningful riparian protection for Kaiwharawhara Stream.

3. Assessment Criteria

The Letter states:

Vegetation on this property is representative of current, regenerating vegetation types. The site is part of a larger area which provides habitat for fauna and plays an important role connecting the Outer Town Belt to Wellington Harbour. Also provides riparian protection to Kaiwharawhara Stream.

Before commenting on this and making our own assessment in Section 4, it is useful to set out some of the applicable legislative and policy statements. These are summarised below.

3.1. Resource Management Act

Relevant sections of the Resource Management Act (RMA) include sections 5, 6, 76 and 85.

Section 6 (c) is commonly quoted by councils, including WCC, often without reference to Section 5 or the rest of section 6. Reading all these sections from the act gives proper context to Section 6 (c).

⁵ Conservation status of New Zealand birds, 2016 | DOC

⁶ Biodiversity in Aotearoa, 2020 | DOC

⁷ Managing Riparian Zones, July 1995 | DOC

5 Purpose

- (1) The purpose of this Act is to promote the sustainable management of natural and physical resources.
- (2) In this Act, **sustainable management** means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while—
 - (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and
 - (b) safeguarding the life-supporting capacity of air, water, soil, and ecosystems; and
 - (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

6 Matters of national importance

In achieving the purpose of this Act, all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance:

- (a) the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development;
- (b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development;
- (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- (d) the maintenance and enhancement of public access to and along the coastal marine area, lakes, and rivers;
- (e) the relationship of Maori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga;
- (f) the protection of historic heritage from inappropriate subdivision, use, and development;
- (g) the protection of protected customary rights;
- (h) the management of significant risks from natural hazards.

While Section 6 (c) covers *protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna*, the purpose described in Section 5 requires this be done in a way that *enables people and communities to provide for their social, economic and cultural well-being and for their health and safety*.

The key point is that while protection of significant indigenous vegetation is important, policy must also enable the owners of land containing ecological sites and indigenous vegetation to provide for their social and economic well-being and undertake activities to ensure their health and safety.

Section 76 of the RMA describes that if setting rules on urban allotments in the district plan for restricting felling, trimming, damaging, or removal of a tree or trees, this can only be done if there is a schedule to the plan that describes the tree(s) and specifically identifies the allotment by street address or legal description.

Furthermore Section 85 (2) of the RMA sets out that:

any person having an interest in land to which any provision or proposed provision of a plan or proposed plan applies, and who considers that the provision or proposed provision would render that interest in land incapable of reasonable use, may challenge that provision or proposed provision on those grounds

This essentially requires local authorities, when setting policy statements, to ensure these are fair and reasonable, otherwise leaving themselves open to legal challenge in the Environment Court.

3.2. Greater Wellington Regional Council

The Greater Wellington Regional Council (GWRC) in a guide for interpreting its regional policy statement⁸ describes five criteria for identifying ecosystems and habitats with significant indigenous biodiversity values.

⁸ *Identifying and protecting significant indigenous biodiversity in the Wellington region, August 2016 | GWRC*

District and regional plans shall identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values; these ecosystems and habitats will be considered significant if they meet one or more of the following criteria:

- (a) **Representativeness:** the ecosystems or habitats that are typical and characteristic examples of the full range of the original or current natural diversity of ecosystem and habitat types in a district or in the region, and:
 - (i) are no longer commonplace (less than about 30% remaining); or
 - (ii) are poorly represented in existing protected areas (less than about 20% legally protected).
- (b) **Rarity:** the ecosystem or habitat has biological or physical features that are scarce or threatened in a local, regional or national context. This can include individual species, rare and distinctive biological communities and physical features that are unusual or rare.
- (c) **Diversity:** the ecosystem or habitat has a natural diversity of ecological units, ecosystems, species and physical features within an area.
- (d) **Ecological context of an area:** the ecosystem or habitat:
 - (i) enhances connectivity or otherwise buffers representative, rare or diverse indigenous ecosystems and habitats; or
 - (ii) provides seasonal or core habitat for protected or threatened indigenous species.
- (e) **Tangata whenua values:** the ecosystem or habitat contains characteristics of special spiritual, historical or cultural significance to tangata whenua, identified in accordance with tikanga Māori.

These five criteria, as shown above, are representativeness, rarity, diversity, ecological context and tāngata whenua values. These five criteria are referenced by WCC as the criteria used to assess SNAs for Wellington city and in the 2015 Our Natural Capital report. We cover these criteria in our assessment in Section 4.

3.3. Draft National Policy Statement for Indigenous Biodiversity

Appendix 1 of the draft National Policy Statement for Indigenous Biodiversity (NPSIB)⁹ sets out four criteria for identifying significant indigenous vegetation and habitats of indigenous fauna.

Direction on approach

1. This appendix sets out the criteria for identifying significant indigenous vegetation or significant habitats of indigenous fauna.
2. A significant natural area will meet any one of the attributes of the following four criteria:
 - a) representativeness:
 - b) diversity and pattern:
 - c) rarity and distinctiveness:
 - d) ecological context.
3. The context for any assessment of a significant natural area is the ecological district and, as part of the rarity assessment, the land environment in which it is located.

⁹ Draft National Policy Statement for Indigenous Biodiversity, November 2019 | NZ Government

The draft NPSIB is being proposed by Government but the final release has been delayed to the end of 2021 by the Minister for the Environment, likely in response to public bash over the intention to create SNAs on private land. The four criteria are similar to the first four assessment criteria in the GWRC policy.

4. Landowner assessment

In this section we make our own assessment using the GWRC criteria also used by Wildland Consultants when doing the technical, desktop study to identify potential SNAs for WCC. As this process is about finding *significant* areas, we have considered each item to identify if there are material SNA features.

4.1. Representativeness

This is described by the GWRC as:

Ecosystems or habitats that are typical and characteristic examples of the full range of the original or current natural diversity of ecosystem and habitat types in a district or in the region, and that are no longer commonplace, or are poorly represented in existing protected areas.

Reviewing the information in Section 2.2 shows the vegetation in the area is a mix of commonly found and not threatened native species along with some introduced species. The site visit did not identify uncommon or poorly represented ecosystems or habitats.

Furthermore, as described in Section 1, much of the vegetation in the subdivision has established since the poultry farm ceased operating, with the WCC finding (in its 1997 report) typical regeneration patterns as seen over much of the remaining undeveloped land within the Wellington City suburbs.

Reviewing the forest ecosystems report¹⁰ shows the ecosystem for much of the Wellington region was historically kohekohe and tawa forest. The report does list this as regionally endangered with around 16% remaining. The report states:

Kohekohe typically dominates steeper hill slopes, while tawa is more abundant in gullies, toe slopes and shallow hill slopes often in association with titoki. Terrestrial northern rata is common on ridges on Kapiti Island though is scarce on the mainland. Emergent trees are typically sparse though rimu is occasional and in the North Island northern rata is present, while kahikatea and pukatea also occur in gullies and on imperfectly drained soils. Nikau and supplejack are particularly abundant, while mahoe, porokaiwhiri, and kawakawa are common in the subcanopy.

Of the species listed above only common Mahoe and kawakawa were identified during the site visit.

In conclusion, while there are 15 native species within the proposed SNA area for 9 CEDD, these are commonly found rather than being uncommon or poorly represented original or current natural ecosystems. Against this criterion we found nothing material to indicate 9 CEDD should be classified as a SNA.

4.2. Rarity

This is described by the GWRC as:

Ecosystems or habitats that have biological or physical features that are scarce or threatened in a local, regional or national context. This includes individual species, rare and distinctive biological communities, and physical features that are unusual or rare.

As noted above, Section 2.2 shows vegetation in the area is a mix of commonly found and not threatened native species. This emerging vegetation has taken off since the subdivision of the prior farm, supported by resident planting and the conservation covenant and for the Harbour Lights subdivision.

Furthermore, Section 2.3 shows the (highly mobile) bird species sighted in the area are not threatened or in the case of Kākā were shown as recovering when last assessed in 2016.

¹⁰ Forest Ecosystems of the Wellington Region, December 2018 | GWRC

In conclusion, we found nothing material indicating 9 CEDD should be classified a SNA under this criterion.

4.3. Diversity

This is described by the GWRC as:

Ecosystems or habitats that have a natural diversity of ecological units, ecosystems, species and physical features within an area.¹¹

To fit this criterion 9 CEDD would need to have a diverse range of indigenous vegetation and habitat, which as noted in Section 4.1 and as discussed in this section of the report, it does not. Mahoe and kawakawa were identified during the site visit, but no other species listed in the forest ecosystems report were found.

While 9 CEDD contains native bush, it offers limited habitat and vegetative diversity, so against this criterion we found nothing material to indicate it should be classified as a SNA.

4.4. Ecological context

This is described by the GWRC as:

Ecosystems or habitats that either enhance connectivity or otherwise buffer representative, rare or diverse indigenous ecosystems and habitats, or provide seasonal or core habitat for protected or threatened indigenous species.

The Harbour Lights subdivision and therefore 9 CEDD does provide habitat for some highly mobile native bird species. The land is connected to some neighbouring vegetation which appears to be of a similar nature to that found at 9 CEDD. Importantly though, the land is an urban section so is surrounded by much built up environment such as houses and roads. As noted in Section 2.4 the land down to Kaiwharawhara Stream is intersected by Old Porirua Road and Kaiwharawhara Road.

With no direct connection to the outer town belt, Kaiwharawhara Stream or the harbour 9 CEDD it would be difficult to conclude that this area is providing material links to important habitats in the ecological district. Against this criterion 9 CEDD should not be classified as a SNA.

4.5. Tāngata whenua values

This was not raised as an important criterion for 9 CEDD.

4.6. Other considerations

Prior to the Harbour Lights subdivision 124 Old Porirua Road was a poultry farm with areas of gorse and broom. This emerging vegetation now seen has largely occurred since the subdivision of the farm, supported by the conservation covenant and efforts from the landowners to protect the conservation areas in the Harbour Lights subdivision. The 2.5333 ha lot vested to WCC as part of the subdivision now forms part of Odell Reserve.

5. Conclusion

Using the GWRC criteria, our own assessment finds that while 9 CEDD contains some commonly found native bush, it is difficult to conclude this would be a Significant Natural Area. As such we believe it should be excluded from the proposed SNA boundary.

In any case, 9 CEDD already has a conservation covenant to protect our indigenous biodiversity. And adding SNA obligations would result in the WCC extracting further *environmental rent* from private land that has already made substantial contributions to the local environment over recent decades.

Our recommendation is that WCC removes 9 CEDD (and arguably the other 13 impacted properties within the Harbour Lights subdivision) from the proposed SNA boundary.

¹¹ The NPSIB adds this should be for the relevant ecological district.

Appendix 4

Over page is the further response from Wildland Consultants addressing the matters raised in the landowner report (Appendix 3). On note, this report relies of forward-looking statements about what might (or might not) be the situation in future, to support the conclusion that in its current form 9 CEDD should remain part of the SNA079 area.

**SIGNIFICANT NATURAL AREA AT 9 CAPTAIN EDWARD DANIELL DRIVE,
NGAIO, WELLINGTON CITY¹**

**Jina Sagar, Nicki Papworth, Sarah Herbert and Nick Goldwater
September 2021**

INTRODUCTION

The landowners of 9 Captain Edward Daniell Drive (9 CEDD) provided a review of the proposed Significant Natural Area (SNA) on 9 CEDD, within the Wellington City Council (WCC) District, entitled: “SNA Assessment for 9 Captain Edward Daniell Drive Landowner Report to the Wellington City Council”, hereafter referred to as ‘West (2021)’. As a result of this review, they have recommended that WCC removes 9 CEDD from the proposed SNA boundary. This report provides a response to the West (2021) review.

BACKGROUND

One SNA has been identified that includes 9 CEDD: WC079 (Trelissick Park and Old Porirua Road forest), which has been described as:

“Three large and two small areas of forest and scrub comprising extensive prime forest remnants, site forest remnants and five QEII covenants along the Ngaio Gorge and Old Porirua Road, surrounding Kaiwharawhara Stream. Vegetation comprises māhoe forest, karaka-tawa forest and kohekohe forest, with a wide range of species including hīnau, māhoe, hangehange, kōwhai, ngaio, kōtukutuku, houhere, māpou, pūriri, wharangi, ngaio, tī kōuka, ponga, mamaku, karamū, kawakawa, tarata, rewarewa, Hoheria sp., patē, kanono, rangiora, karaka, kōhūhū, horoeka, makomako, karo, poataniwha, kānuka, rimu, miro, kauri, tōtara, carmine rātā, northern rātā, flax, coastal tree daisy, tītoki, Metrosideros fulgens, huruhuru whenua, hounds tongue fern, rengarenga (planted) and kakabeak (planted), houhere, whauwhaupaku, kaikōmako, porokaiwhiri, bush lawyer, large-leaved pōhuehue, New Zealand jasmine, kōwaowao, mouku, maidenhair and leather-leaf fern. Forest remnants identified by Park (1999) and described as predominantly tawa, rewarewa, hīnau, tōtara, kahikatea, kohekohe, tītoki, matai (ridge), wharangi, kōwhai, northern rātā, karaka and kānuka. Drier North-facing slopes include akiraho, tōtara, ngaio, tī kōuka, māhoe, kōhūhū, akeake, tarata, māpou, rewarewa and tawa (0405.17); karaka, māhoe, ngaio, kōtukutuku, tītoki, mamaku and kohekohe (0405.16); māhoe, ngaio, whauwhaupaku and kōtukutuku (0405.15); ngaio, whauwhaupaku, māhoe, karaka, kōtukutuku, puka, mamaku, kohekohe (0405.14). Notable species include maidenhair fern (Adiantum fulvum, regionally sparse), northern rātā (Metrosideros robusta; of local interest), and karaka (Corynocarpus laevigatus; possible tangata whenua values). Non-local indigenous species include Pittosporum ralphii. The Kaiwharawhara Stream provides habitat for indigenous Threatened or At Risk fish species, including shortjaw kōkopu (Galaxias postvectis, 'Threatened - Nationally Vulnerable'), bluegill bully (Gobiomorphus hubbsi; 'At Risk - Declining'), kōaro (Galaxias brevipinnis; 'At Risk - Declining'), longfin eel (Anguilla dieffenbachii; 'At Risk - Declining'), and redfin bully (Gobiomorphus huttoni; 'At Risk - Declining'). Bird species recorded within this SNA include North Island kākā (Nestor meridionalis septentrionalis; 'At Risk - Recovering'), bush falcon (Falco novaeseelandiae ferox; 'At Risk - Recovering'), whitehead (Mohoua albicilla, At Risk-

¹ Reviewed by Nick Goldwater.

Declining) and kākāriki (Cyanoramphus novaezelandiae novaezelandiae, 'At Risk - Relict'). Indigenous 'Not Threatened' fauna species which reportedly use the site include tūī, eastern rosella, bellbird, shining cuckoo, paradise shelduck, silvereye, pīwakawaka, kererū, skinks and glow worms. This site includes WCC public land and DOC EcoSite No.921-Ngaio Gorge Bush.”

The SNA (WC079: Trelissick Park and Old Porirua Road forest) has been assessed as meeting the following significance criteria in Policy 23 of the Regional Policy Statement (GWRC 2013):

- **RPS23a Representativeness:** The site contains mature prime forest, which is representative of the original vegetation type. Māhoe forest is also representative of current vegetation types in the Wellington district.
- **RPS23b Rarity:** Four At Risk bird species have been recorded from the site together with one Threatened and two At Risk fish species (in Kaiwharawhara Stream), and one regionally sparse plant species. Contains more than 0.5 hectare of indigenous vegetation on Acutely Threatened land environments.
- **RPS23c Diversity:** Comprises a large area which includes a wide range of habitat and vegetation types, indigenous species, and plant communities adapted to a range of altitudes.
- **RPS23d Ecological Context:** A large site that plays an important role in connecting the Outer Town Belt network of sites to Wellington Harbour. Indigenous vegetation in the site also provides important buffering to Kaiwharawhara Stream.

A site visit was undertaken to 9 CEDD on the 19 March 2021 by an ecologist from Wildlands and a planner from WCC. Some adjustments to the delineation of the SNA were made to exclude areas of vegetation with greater than 50% cover of exotic or non-local indigenous species. The SNA on 9 CEDD was adjusted to exclude the area of blackberry-old man's beard vineland by the driveway on the property. The remaining areas of vegetation on the property were assessed as significant under RPS23 for:

- **RPS23a Representativeness:** Māhoe forest and scrub on this property is representative of current vegetation types in the Wellington region.
- **RPS23d Ecological Context:** This property is part of a larger site which provides habitat for fauna and plays an important role connecting the Outer Town Belt to Wellington Harbour. Also provides riparian protection to Kaiwharawhara Stream.

REVIEW OF RPS23 ASSESSMENT BY WEST (2021)

Representativeness

West (2021) has assessed vegetation on the property as not significant for the RPS23a: Representativeness criterion due to “...*the vegetation in the area is a mix of commonly found and not threatened native species along with some introduced species. The site visit did not identify uncommon or poorly represented ecosystems or habitats...Using the GWRC criteria, our own assessment finds that while 9 CEDD contains some commonly found native bush, it is*

difficult to conclude this would be a Significant Natural Area. As such we believe it should be excluded from the proposed SNA boundary”

The definition of representativeness in the Regional Policy Statement 23 includes ‘*modified environments, which represent indigenous ecosystems and habitats as they are now*’. Indigenous-dominant, secondary vegetation types at 9 CEDD can therefore be considered representative of current vegetation types within the Wellington district. These secondary vegetation types will eventually become mature phase secondary forests, which will provide an important extension to the adjacent primary forest remnants.

There is a secondary component to the RPS23a: Representativeness criterion, which requires that representative vegetation be either:

- No longer commonplace (less than about 30% remaining); or
- Poorly represented in existing protected areas (less than about 20% legally protected).

Within the Wellington Ecological District, primary indigenous forest has been reduced to only c.2% and secondary broadleaved indigenous hardwoods have been reduced to c.15%. Indigenous dominant forest and scrub types within Wellington Ecological District could therefore trigger the RPS23a criterion for Representativeness, as they can be considered to be no longer commonplace (less than 30% remaining).

Therefore, we consider that the following vegetation type would trigger significance for RPS23a: Representativeness:

- Māhoe-dominated forest with rangiora, hangehange, kawakawa and other indigenous plant species described in West (2021).

Rarity

West (2021) states that “*14 of the native plants found are not listed as being threatened nationally, and at a regional level none of the identified plants were recorded as being under threat by the GWRC or WCC*” and therefore “*In conclusion, while there are 15 native species within the proposed SNA area for 9 CEDD, these are commonly found rather than being uncommon or poorly represented original or current natural ecosystems. Against this criterion we found nothing material to indicate 9 CEDD should be classified as a SNA.*”

We agree that the threat status of most of the plants listed from the site visit are Not Threatened. The list provides context for the diversity of indigenous species in the vegetation community (see Plant Communities and Habitats above), rather than their rarity. The habitats on 9 CEDD have 20-30% indigenous cover left in the Wellington Region so the vegetation itself does not trigger rarity criterion (GWRC 2016).

While the At Risk bird species were not seen during the site visit, for such highly mobile species, the site visit provides only a snapshot in time. At Risk bird species have been recorded in the surrounding reserves and triggers the rarity criteria for the wider SNA. It is worth noting that the RPS23b: Rarity criterion as defined by Greater Wellington Regional Council (2016) does not specify how reliant on habitat a species must be to trigger significance. This means that a verified record of a threatened species within the area can trigger this criterion.

Diversity

West (2021) states that “*While 9 CEDD contains native bush, it offers limited habitat and vegetative diversity, so against this criterion we found nothing material to indicate it should be classified as a SNA.*”

The WC079 SNA comprises a large area which includes a wide range of habitat and vegetation types, indigenous species, and a reasonable altitudinal sequence. The SNA has at least three different vegetation types and more than 50% of expected indigenous plant species and meets the criteria for diversity. However, 9 CEDD has only one plant community with a moderate diversity of indigenous plant diversity. While the property does not itself meet the criteria for this category, it contributes to the overall diversity of the SNA.

Ecological context

West (2021) states that “*The Harbour Lights subdivision and therefore 9 CEDD does provide habitat for some highly mobile native bird species. The land is connected to some neighbouring vegetation which appears to be of a similar nature to that found at 9 CEDD. Importantly though, the land is an urban section so is surrounded by much built up environment such as houses and roads. As noted in Section 2.4 the land down to Kaiwharawhara Stream is intersected by Old Porirua Road and Kaiwharawhara Road. With no direct connection to the outer town belt, Kaiwharawhara Stream or the harbour 9 CEDD it would be difficult to conclude that this area is providing material links to important habitats in the ecological district. Against this criterion 9 CEDD should not be classified as a SNA.*”

Whilst we largely agree that the surrounding landscape has been fragmented due to residential development and roads, 9 CEDD is part of a complex of sites that provides an important forested corridor that connect the town belt to the Wellington Harbour. This SNA also buffers the Kaiwharawhara Stream, particularly to the north. The location of 9 CEDD and other properties adjacent to protected areas (e.g., Odell and Recreation Reserves) provides spill-over areas for birds that will become increasingly important as pest control allows threatened species to establish self-sustaining populations in surrounding bush. It is important for nearby vegetation to enhance habitat connectivity for these species, for example, whitehead, which are reluctant flyers, that do not often cross open ground.

CONCLUSIONS

The outcomes from our review of West (2021) are as follows:

- We consider that the vegetation on the property described by West (2021) as māhoe dominated forest with rangiora, hangehange, kawakawa and other indigenous plant species described in West (2021) would trigger significance for RPS23a: Representativeness.
- The māhoe-dominated forest at 9 CEDD is part of a complex of sites that provides an important forested corridor that connects the town belt to the Wellington Harbour.

Therefore, we recommend that the area of māhoe-dominated forest identified on the property is retained within SNA079.

ACKNOWLEDGMENTS

Tom Chi (Wellington City Council) is thanked for providing us with the opportunity to review this report.

REFERENCES

Greater Wellington Regional Council 2013: Regional Policy Statement for the Wellington Region. Greater Wellington Regional Council, Wellington. 201 pp.

Greater Wellington Regional Council 2016: Identifying and protecting significant indigenous biodiversity in the wellington region- A guide to interpreting criteria in the Regional Policy Statement. Greater Wellington Regional Council, Wellington. 33 pp.

West, S. 2021. SNA Assessment for 9 Captain Edward Daniell Drive. Landowner Report to the Wellington City Council, 7 July 2021. 7pp

Appendix 5

Over page is the Harbour Lights land title covenant that contains conservation obligations.

TRANSFER -HARBOUR LIGHTS SUBDIVISION – RESTRICTIVE COVENANTS

Continuation of "Estate or Interest or Easement to be created"

1.0 Definitions and Interpretation:

1.1 In this Transfer unless the context otherwise requires:

"**Accessway**" means that part of the Land marked ["A", "B" etc] on deposited plan [] over which there has been granted easement of rights of way, power, telecommunications, cable, T V stormwater and sewage drainage rights as provided in Easement certificate [].

"**Buildings Covenants**" means the building covenants set out in clause 4.0.

"**Conservation Area**" means that part of a Conservation Lot other than a Designated House Site, a Driveway or an area that is part of the Accessway.

"**Conservation Lot**" means each Lot but excluding Lot 1 and Lot 25 on deposited Plan [].

"**Conservation Covenants**" means the conservation covenants set out in clause 3.0.

"**Default Interest Rate**" means 5% above the rate charged by Bank of New Zealand or by any bank that is a successor of the Bank of New Zealand on commercial overdrafts.

"**Designated House Site**" means an area on a Lot that the owner designates as a site for the construction of a Single Unit Dwelling.

"**Driveway**" means a part of Lot that provides access from the accessway to the Designated house site on that lot.

"**Easement**" means an easement that a Lot has the benefit of or which a Lot is subject to.

"**Land**" means and Includes Lots 1-23 (inclusive) and Lot 25 on Deposited Plan [] being all of the land in Certificates of Title [] to [] (inclusive) Wellington Registry.

"**Local Authority**" means Wellington City Council or the local authority for the time being having jurisdiction over the Land and includes any local or territorial authority that has jurisdiction over the Land and any employee and agent of a Local Authority.

"**Lot**" means one of the Lots enumerated in the definition of Land.

"**Lots**" means all of the lots enumerated in the definition of Land.

"**Owner**" means the registered proprietor for the time being of a Lot

"**Owners**" means all of the registered proprietor for the time being of the Lots.

"**Resource Consent**" means the resource consent given by the Local Authority for the subdivision of the Land into Lots and includes each and every condition of the Resource Consent.

"**Rules**" means the rights and duties of an Owner and the Owners set out in this Transfer.

"**Single Unit Dwelling**" means one household unit or principal residence which may include separate accommodation for an immediate relative or relatives of the occupier of the household unit or residence or a domestic employee of the occupier of the household unit or residence and includes garages, outbuildings and other similar structures.

"**Works**" means the works described in clauses 7.0 and 10. 0 and includes any other work that the Owners agree to undertake pursuant to clause 11.0.

1.2 In this Transfer:

(a) Where the context permits the singular includes the plural and vice versa;

- (b) references to clauses are to clauses in this Transfer;
- (c) obligations and covenants to be complied with by more than one person shall bind those persons jointly and severally

2.0 TRANSFER AND COVENANTS

- 2.1 In consideration of the sum of \$1.00 paid by the Transferee to the Transferor (the receipt of which sums hereby acknowledged) the Transferor transfers to itself as Transferee all the Transferor's estate and interest in the land.
- 2.2 The Transferee for itself, so as to bind each of the Lots covenants and agrees with itself as Transferor for the benefit of each of the Lots from time to time that the Transferee shall at all times comply with the succeeding clauses of this Transfer so that the provisions of the clauses inure in perpetuity for the benefit of each of the Lots

3.0 CONSERVATION COVENANTS

- 3.1 Each Owner covenants with the Owners that:
 - 3.1.1 An Owner will not commence to erect a Single Unit Dwelling without first selecting and laying out a Designated House Site;
 - 3.1.2 the Designated House Site will not exceed an area that is 400m²(excluding any Driveway) Provided That the area of a Designated House Site may exceed 400 m² to a maximum of 600m² (excluding any Driveway) if:
 - (a) the shape or contour of a section justifies an area greater than 400 m²; or
 - (b) the design of a Single Dwelling Unit calls for an area in excess of 400 m² ; and
 - (C) the Owner obtains the written approval of the Local Authority to remove existing vegetation cover to that area in excess of 400 m².
- 3.2 Each Owner of a Conservation Lot covenants and agrees with the Owners that:
 - 3.2.1 a Designated House Site will be located in the area designated on each Conservation Lot as the approximate site for a dwelling in the Resource Consent;
 - 3.2.2 that part of a Conservation Lot remaining after selection of the Designated House Site (other than any part of a Conservation Lot that comprises part of the Accessway or a Driveway) shall be a Conservation Area;
 - 3.2.3 the Owner will manage the Conservation Area to protect and preserve the conservation values of the Conservation Area and for that purpose an Owner will not and will ensure that no other person will.
 - (a) fell, remove, trim, burn, prune or take any trees, bush or flora;
 - (b) introduce any substance injurious to plant life;
 - (c) introduce any trees, shrubs or plants or the seeds of any trees, shrubs or plants other than local native trees, shrubs and plants;
 - (d) mark, paint, blast or remove soil, rock or stone or disturb the ground in any other way;
 - (e) store, dump, pile or place or allow to accumulate any rubbish or other waste material;
 - (f) allow any livestock to graze, feed or remain;
 - (g) construct any building, fence or other structure;

- (h) take any action or do anything to cause deterioration to the natural flow or supply of any water course or resource; or
- (i) erect any boundary or dividing fence (other than a fence dividing a Designated House Site and a Conservation Area)

in, to or on the Conservation Area

3.2.4 the Owner of a Conservation Lot will take all reasonable steps to:

- (a) control the introduction and spread of noxious plants and weeds;
- (b) promptly repair any damage to native flora by replanting and reseeding using local indigenous species; and
- (c) prevent erosion as far as practicable

in the Conservation Area.

3.3 Nothing in clauses 3.2.3 and 3.2.4 will prevent the Owner of a Conservation Lot from and an Owner of a Conservation Lot may:

- 3.3.1 trim, prune or fell any trees, bush or flora in the Conservation Area to protect the reasonable expected views and sunlight to a Lot or any adjoining Lot or the health and safety of any person;
- 3.3.2 create and maintain pathways and walkways through the Conservation Area;
- 3.3.3 maintain and repair any Easement in the Conservation Area in accordance with the terms and conditions of the grant of that Easement

Provided That an Owner will not commence any work that is permitted by this clause without first obtaining the written approval of the Local Authority to the specification of that work including where appropriate specification for the reinstatement of any trees, shrubs or flora using local native species and the Owner covenants with the Owners to carry out the work in accordance with such specifications.

3.4 The Owner of a Lot covenants with the Owners that the Owner of a Lot will not permit the health or safety of any person to be endangered or the reasonably expected views of and sunlight to any Single Unit Dwelling on any Lot to be infringed by the growth of trees, bush or flora on a Lot and in the event of danger to the health and safety of any person or infringement of reasonably expected views of or sunlight to any Single Unit Dwelling on any Lot the Owner of the infringing Lot, will:

- 3.4.1 if the trees, shrubs or flora are within a Designated House Site or a Driveway immediately at that Owner's cost trim, prune or fell any trees, bush or flora on the Lot so that the infringement ceases; or
- 3.4.2 if the trees, shrubs or flora are within a Conservation Area an Owner will upon payment by the Owner requesting action to be taken as described in this clause 3.4 (and subject to the prior written approval of the Local Authority) immediately trim, prune or fell the trees, shrubs or flora requested by that other Owner or will carry out such work as the Local Authority authorises.

3.5 The Owners of Lots 1 and Lot 25 covenant and agree with the Owners that:

- 3.5.1 a Designated House Site will be located in the area designated on Lot 1 and Lot 25 as the approximate site for a dwelling in the Resource Consent; and
- 3.5.2 the Owners of Lot 1 and Lot 25 will not plant any trees and shrubs outside the Designated House Site on Lot 1 and Lot 25 other than local native species

3.6 Each Owner covenants with the Owners that the Owner of a Lot will permit the Local Authority to at all reasonable times inspect a Lot to determine that the provisions of this clause 3.0 are being met by an Owner. An Owner will promptly remedy or comply with any reasonable directions that the Local Authority may give by notice in writing to an Owner in respect of a Lot or the breach or non observance of any of the covenants of this clause 3.0.

3.7 Any consent or other approval required by or to be obtained from the Local Authority pursuant to this clause 3 should be referred to Asset Planning, Lands and Property Department of the Local Authority

4.0 BUILDING COVENANTS

4.1 Each Owner covenants with the Owners that:

4.1.1 An Owner will not erect on any Lot and only within a Designated House Site any dwelling, building, outbuilding or other structure other than a Single Unit Dwelling;

4.1.2 a Single Unit Dwelling shall be designed (which shall include its colour scheme) to be in harmony with the natural bushclad landscape in the Conservation Area (if the Lot has a Conservation Area) and other Conservation Areas surrounding the Lot;

4.1.3 a Single Unit Dwelling will be constructed predominantly of brick, stone, split block stucco, natural timber, plaster or other material accepted as having architectural merit;

4.1.4 if the Single Unit Dwelling contains or comprises any separate garage or other outbuilding such garage or other outbuilding must be of a similar design and construction (including material used in construction) to the rest of the Single Unit Dwelling and

4.1.5 a Single Unit Dwelling will

(a) have a roof that IS sheathed so as not to have high reflective qualities

(b) be constructed so as to comply with plans and specifications approved by and any other requirements imposed by the Local Authority

(c) be completely constructed and finished within nine months of commencement of excavation for foundations, and

(d) have all ancillary work including planting of lawns, landscaping and any other development work completed and finished within 15 months of commencement of excavation for foundations

4.2 Each Owner covenants with the Owners that a Driveway on a Lot will

4.2.1 be located in the general area designated on the Lots as the approximate location for a Driveway in the Resource Consent;

4.2.2 be constructed of such permanent materials so as to blend with the natural bushclad landscape of the Conservation Area (if the Lot has a Conservation Area) and other Conservation Areas surrounding a Lot and

4.2.3 completed within the time provided in clause 415(d)

4.3 Each Owner covenants with the Owners that the Owner will not permit a caravan, hut, tent, shed, pole or similar structure to be placed or erected on any Designated House Site other than as may be required for use in the construction of a Single Unit Dwelling. Any such caravan, hut, tent, shed, pole or similar construction permitted pursuant to this clause shall be removed immediately on completion of the Single Unit Dwelling.

4.4 Each Owner covenants with the Owners that an Owner will promptly replace restore reinstate and repair at the Owner's cost all damage that may arise or be caused to the landscape and arising from the construction of the Single Unit Dwelling, a Driveway, or the laying out of a Designated House Site.

4.5 Each Owner covenants with the Owners that an Owner will not permit or allow any building material, building waste material or rubbish to accumulate on any Lot.

5.0 ADDITIONAL COVENANTS

5.1 Each Owner covenants with the Owners that an Owner will in addition to the covenants set out in

clauses 3.0 and 4.0 comply with all relevant consents of the Local Authority and other regulatory authorities attaching to the Resource Consent and the building requirements for the time being in force of the Local Authority.

6.0 ACCESSWAY

- 6.1 The Accessway is to be used only in accordance with the provisions of Easement Certificate No. [creating the easements in respect of the Accessway].
- 6.2 The Owners are to use the Accessway only as if transferees of the Easements over the Accessway.
- 6.3 The Owners individually are not to do or allow anything to be done by which the Accessway might become a private or public road in terms of the Local Government Act 1974 subject only to clause 14 O.
- 6.4 The Owners will not use or permit the Accessway to be used for parking
- 6.5 Vehicular use of the Accessway is limited as to laden weight, dimensions, speed and use of vehicles as applied to urban public roads of the same characteristics as the Accessway or such more limited criteria approved by the Owners
- 6.6 Other than for Works under these Rules no building or construction is to be undertaken upon the Accessway.
- 6.7 Planting and revegetation undertaken in accordance with the Resource Consent shall be facilitated, maintained and protected by the Owners.

7.0 WORKS

- 7.1 The following Works are to be performed, constructed and maintained on the Accessway to the satisfaction of the Owners
 - (a) safe vehicular carriageway;
 - (b) such curb and channelling as the Owners approve;
 - (c) grassed berms wherever practical;
 - (d) such matters above and below the carriageway level as are desirable including the maintenance, repair and replacement of any pipes, conduits or similar under the carriageway;
 - (e) provision for disposal of stormwater along and from the Accessway;
 - (f) such footpaths as the Owners approve;
 - (g) street lighting as may be required by the Local Authority.
- 7.2 Sealing or paving of the Accessway to the satisfaction of the Owners is to be provided and maintained for:
 - (a) vehicular carriageway; and
 - (b) such footpaths approved by the Owners on conditions of such sealing and paving.
- 7.3 Where batters for the vehicular carriageway on the Accessway are reasonably required on adjoining land the Owner of that adjoining land authorises such batter, its construction and maintenance.
- 7.4 Works for utilities or services by or for an Owner individually may be undertaken on the Accessway only
 - (a) underground; and
 - (b) at a location and depth in the Accessway first approved by the Owners.

- 7.5 An Owner individually undertaking Works or having Works undertaken for utilities or services or operating any utilities or services in the Accessway shall:
- (a) ensure that no damage or loss is suffered by or to any other Owner's utilities or services; and
 - (b) ensure that the Works comply with the requirements of
 - (1) the relative network utility operator; and
 - (2) the Local Authority

8.0 LIABILITY

- 8.1 Each Owner is responsible for and indemnifies all of the other Owners in respect of:
- (a) The Owner's acts or omissions relative to the Accessway; and
 - (b) Works individually undertaken by or for the Owner on or in the Accessway including compliance with.
 - (c) these Rules; and
 - (d) all relative primary and delegated legislation including but not limited to laws as to health and safety in employment.
- 8.2 No Owner is to commit or permit any nuisance on the Accessway.

9.0 INSURANCE

- 9.1 The Owners shall take out and maintain in their collective names policies of public liability, personal injury or loss of life insurance fully insuring the Owners against all claims and liabilities whether under statute or under common law in respect of damage to or loss of any real or personal property of any description and loss of life or personal injury arising or caused in the course of or caused by any use of the Accessway or execution of Works or for the benefit of the Accessway whether by or for any Owner individually the Owners or any others. The total amount payable under such insurance shall be approved by the Owners from time to time.

10.0 MAINTENANCE AND DEVELOPMENT MANDATORY WORKS

- 10.1 The Owners shall undertake such Works as are necessary or desirable from time to time to.
- (a) ensure the safety of the Accessway for the use of vehicles and any footpath on the Accessway for the use of pedestrians;
 - (b) ensure the upkeep of paved or sealed surfaces and the mowing of grass burns on the Accessway to neat and tidy standard;
 - (c) ensure that no nuisance is caused by unreasonable use of the Accessway nor from the disposal of surface waters from it In this regard the Owners shall co-operate as necessary to allow the disposal of surface water into any suitable water course on condition that associated works are undertaken to minimise injurious infection to such adjoining land and in accordance with any requirements of the Local Authority;
 - (d) ensure that there are no noxious weeds or plants on the Accessway;
 - (e) maintain and protect planting and revegetation referred to in clause 6.7 above; (f) maintain and operate any gates or other structures on the Accessway; (g) maintain and operate street lighting on the Accessway

11. OPTIONAL WORKS

- 11.1 With the approval of the Owners additional works may be undertaken on the Accessway for the purposes of
- (a) security;
 - (b) beautification and landscaping;
 - (c) additional or extra lighting;
 - (d) improvement or provision of utilities or services (whether free or as a charge as to utilisation) available to all Owners
- or for such other purposes as the Owners may agree.
- 11.2 The terms and conditions on which any such additional works may be taken shall be determined by the Owners.

12.0 FINANCIAL CONTRIBUTIONS

- 12.1 Financial contributions are to be made by the Owners to meet the costs of
- (a) insurances under clause 9.0;
 - (b) maintenance and development works under clause 100; and
 - (c) optional works under clause 11.00 as the Owners approve from time to time
- 12.2 Each Owner shall make all financial contributions in equal shares on or before the date specified by the Owners for payment.
- 12.3 The Owners may make a levy on the Owners for all or part of the financial contributions to be made or anticipated and any such levy will be paid by an Owner on or before the date or dates specified by the Owners for payment.
- 12.4 Any financial contributions (including any levies) made but not expended will cease to be the property of the Owner that made the financial contribution (or levy). All financial contributions will be applied only for the purposes set out in clause 121 or for such other purposes as the Owners decide from time to time
- 12.5 Any Owner that fails to pay any financial contribution under clause 12.2 or any levy under clause 12.3 (time being of the essence) shall pay interest thereon at the Default Interest Rate from the due date for payment to the date of payment
- 12.6 Any financial contribution and default interest thereon at the Default Interest Rate may be recovered from an Owner by any other Owner as debt due.
- 12.7 Any Owner that fails to pay a financial contribution (including a levy) within 14 days of receipt of notice of demand or fails to pay default interest at the Default Interest Rate on any financial contribution (including a levy) not paid on due date (a "Defaulting Owner") agrees to grant in favour of all other Owners a charge as security for payment of the sum so demanded such charge to be over the Lot of the Defaulting Owner.

13.0 OWNER'S DECISIONS

- 13.1 The Owners may determine from time to time the manner of making decisions and taking action whether direct or indirect to ensure compliance with these Rules
- 13.2 In default of the Owners determining otherwise they shall act as an unincorporated society these purposes Nothing in this clause will be taken to prohibit the Owners from establishing a corporate body to carry out the obligations of the Owners in respect of the Accessway to otherwise ensure compliance by the Owners with the Rules If the Owners establish corporate body all of the Owners hereby agree that such corporate body has the power ensure compliance with and to enforce these Rules

- 13.3 Decisions require the assent of not less than 60% of the Owners For this purpose the of each Lot shall have a single vote.
- 13.4 Decisions shall be made reasonably
- 13.5 Decisions of the Owners so made shall be complied with by all Owners
- 13.6 Written notices to Owners are to be deemed received 7 days after posting addressed to Owner at the Owner's property for which purpose each Owner being one of the Owners maintain a facility for received mail at the Owner's property or otherwise as the Owners agree

14.0 PUBLIC ROAD

- 14.1 In the event that the Local Authority takes action to acquire or to dedicate the Accessway public road the Owners may consent

15.0 DISPUTE RESOLUTION

- 15.1 Unless an Owner has first complied with clauses 15.2 to 15.4 (inclusive) that Owner (in clause called a "party") may not commence Court proceedings relating to any dispute a from this Deed (except where the party seeks urgent interlocutory relief in which case t party need not comply with this clause before seeking such relief) and where that party to so comply with those clauses the other party need not comply with those clauses be commencing Court proceedings relating to that dispute
- 15.2 A party (referred to in this clause as "the first party") claiming that a dispute has arisen this Deed between the parties shall gives written notice to the other party (referred to in clause as "the second party") specifying the matter in dispute and designating as its representative in negotiations relating to the dispute a person with authority to settle the dispute The second party shall within 10 days after receiving the first party's notice give written notice to the first party designating as its representative In negotiations relating
- 15.3 The parties shall use their reasonable endeavours to procure that the persons designated under clause 15.2 shall within 10 days of the last designation required by clause 15.2 following whatever investigation each such person seems appropriate seek to resolve the dispute
- 15.4 If the dispute is not resolved within the period referred to in clause 153 (or within such longer period as their respective representatives agree is appropriate) the parties shall within a further period of 10 days (or such longer period as the representatives may agree IS appropriate) use their reasonable endeavours to agree in good faith on a process for resolving the whole or part of the dispute through means other than litigation and on:
- (a) the procedure and timetable for any exchange of documents and other information relating to the dispute
 - (b) procedural rules and a timetable for the conduct of selected mode of proceedings;
 - (c) a procedure for compensation of any neutral person who may be employed by the parties in dispute; or
 - (d) whether the parties should seek assistance of a dispute resolution organisation
- 15.5 After the expiry of the time established by or agreed under clause 154 for agreement on a dispute resolution process a party which has complied with the provisions of clauses 15.1 to 15.4 (inclusive) may, by written notice to the other party, terminate the dispute resolution process provided for in these clauses and may then commence court proceedings relating to the dispute

16.0 BREACH OF COVENANTS

- 16.1 If there should be any breach or non observance of any of the covenants and conditions contained in this Deed and without prejudice to any other liability which an Owner may have to any Authority or any person having the benefit of such covenants and conditions and without in any way restricting the remedies available to any Owner or any person having the benefit of such covenants and conditions

- (a) The Owner shall remove or cause to be removed from the Lot any building or part thereof or any fence or other structure used, erected, commenced or repaired in breach or non observance of covenants and conditions in this Deed; and
- (b) The Owner shall on demand by the Owners replace any building material used or to be used in breach or non observance of the covenants and conditions with building materials which comply with the Owner's obligations under this Deed