

**Before the Independent Hearings Panel
At Wellington City Council**

Under Schedule 1 of the Resource Management Act 1991

In the matter of Hearing submissions and further submissions on the
Wellington City Proposed District Plan

**Hearing Stream 11 – Further Right of Reply of Adam McCutcheon
on behalf of Wellington City Council**

Date: 5 November 2024

RIGHT OF REPLY

AUTHOR

- 1 My name is Adam McCutcheon. I am employed as a Team Leader in the District Planning Team at Wellington City Council (the Council).
- 2 I have prepared this Further Right of Reply in respect of the matters raised during [Hearing Stream 11](#) relating to the Ecosystems and Indigenous Biodiversity (ECO) and Infrastructure – Ecosystems and Indigenous Biodiversity (INF-ECO) topics.
- 3 My qualifications and experience as an expert in planning are set out in my [Section 42A Report](#).
- 4 I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2023, as applicable to this IHP hearing. I have not omitted to consider material facts known to me that might alter or detract from the opinions I express.
- 5 Any data, information, facts and assumptions I have considered in forming my opinions are set out in the part of the evidence in which I express my opinions. Where I have set out opinions in my evidence, I have given reasons for those opinions.

SCOPE OF RIGHT OF REPLY

- 6 I have been asked by the Panel Chair to provide comment on:
 - 6.1 The key changes between the Resource Management (Freshwater and Other Matters) Amendment Bill and its enacted form; and
 - 6.2 The effect (if any) of the now enacted Amendment Act on the provisions I recommended in my right of reply.

RESPONSE

- 7 The Resource Management (Freshwater and Other Matters) Amendment Bill was reported from the committee of the whole House on 22 October 2024.
- 8 It had its third reading on 23 October and achieved Royal Assent on 24 October 2024.
- 9 I refer to it as the 'Amendment Act' from now on.
- 10 The Amendment Act can be found here: [Resource Management \(Freshwater and Other Matters\) Amendment Bill 47-3 \(2024\), Government Bill 21 New section 78 inserted \(Time-limited modifications to NPSIB 2023\) – New Zealand Legislation](#).
- 11 In short, there have not been any substantial changes to the introduced version of the Amendment Act that have an impact on the PDP SNA process or would alter the recommendations I have made to date.
- 12 The changes made have helped clarify some of the interpretation vagaries of the introduced version and are consistent with the reading offered by Mr Whittington in his [legal submission](#).

POINTS TO NOTE

- 13 No changes have been made to:
- 13.1 The validity of SNAs included in a proposed plan or change before commencement of the Amendment Act, including where decisions have not been made on them (see new s78(6)(a) and (b));
 - 13.2 The specific provisions of the NPS-IB which are suspended during the 3-year period in which the Amendment Act has effect (see new s78(2)); and
 - 13.3 The NPS-IB requirement for district plans to include provisions to manage indigenous biodiversity outside of SNAs (NPS-IB clause 3.16).

- 14 The Amendment Act has clarified that:
- 14.1 Areas of significant indigenous vegetation or significant habitat of indigenous fauna included in district plans post commencement of the Amendment Act cannot be treated as an SNA for the purpose of the NPS-IB 2023, and the provisions of the NPS-IB do not apply to them (see s78(4A)).
- 14.2 It does not affect:
- (i) Any function or requirement under other provisions of the Act relating to indigenous biological diversity (ie, s6); or
 - (ii) Any obligations of local authorities to give effect to provisions in policy statements and plans relating to indigenous biological diversity (ie the Wellington Regional Policy Statement (RPS) and Natural Resources Plan) (see s78)(4)(a) and (b)).
- 15 The changes summarised above do not cause me to change my position on the key issues addressed in my [s42A report](#) including:
- 15.1 The exclusion of residential SNAs in this process (paras 125-135); and
- 15.2 The requirement to include plan provisions to address indigenous biodiversity outside of SNAs (para 344).
- 16 While it is perhaps arguable that the RPS directions for indigenous biodiversity provide a separate pathway for the identification and management of residential SNAs that is not derived from the NPS-IB, I note that:
- 16.1 The RPS itself has been amended through its Change 1 process to implement the NPS-IB, such that the national direction forms the basis of the subsequent RPS direction to district plans;

16.2 SNA provisions purporting to give effect to the RPS would have to be separately developed; and

16.3 It does not avail my concerns in respect of natural justice for those property owners.

Adam McCutcheon

A handwritten signature in black ink, appearing to read 'AMC', with a long horizontal line extending to the right.

Date: 4 November 2024