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

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Statement of supplementary planning evidence of Adam McCutcheon on behalf of Wellington City Council

Date: 3 September 2024

INTRODUCTION:

1 My full name is Adam McCutcheon. I am employed as a Team Leader in the District Planning Team at Wellington City Council.

2 I have read the respective evidence of:

Meridian Energy Limited

a. Christine Foster

Transpower New Zealand Limited

a. Pauline Whitney

b. Sarah Shand

Horokiwi Quarry

a. Pauline Whitney

b. Dr Vaughan Keesing

Boston Real Estate Limited

a. Cameron de Leijer

Wellington International Airport Limited

a. Jo Lester

b. Dr Michael Anderson

c. Kirsty O'Sullivan

Steve West

a. Steve West

Powerco

b. Chris Horne

Paul Blaschke

a. Paul Blaschke

3 I have prepared this statement of evidence in response to:

3.1 Expert evidence submitted by the people listed above to support the submissions and further submissions on the Wellington City Proposed District Plan (the Plan / PDP); and

3.2 Identified errors, omissions and additional matters I wish to comment on since release of my section 42A (s42A) report.

4 Specifically, this statement of evidence relates to the matters addressed in Hearing Stream 11 of the PDP in respect of Ecosystems and Indigenous Biodiversity.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5 My s42A report at paras 7-18 sets out my qualifications and experience as an expert in planning.

6 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 Independent Panel hearing.

RESPONSES TO EXPERT EVIDENCE

Meridian Energy Limited

Christine Foster

7 Having read Ms Foster's evidence I consider that the substance of her concerns are best dealt with in the wrap up hearing as they relate primarily to how the Renewable Electricity Generation Chapter (REG) reconciles activities within Significant Natural Areas (SNAs).

8 Ms Foster, Mr Jeffries (REG reporting officer) and I had a meeting preceding the lodgement of Ms Foster's evidence where the following was agreed:

8.1 REG activities have a specific carve out from the NPS-IB under clause 1.3.3;

8.2 Given the substantial rework of the ECO chapter recommended in my S42A report, where new policies have been added and others renumbered, cross-references to ECO policies in the right of reply version of the REG chapter need amending so that (if retained) they cross-refer to policies of the same intent;

8.3 That any correction of references to ECO policies should not have the effect of taking a more restrictive approach to REG activities than that recommended by Mr Jeffries in Hearing Stream 9;

8.4 There is merit in considering Ms Fosters' recommended approach to remove references to ECO policies entirely from the REG chapter; and

8.5 That Mr Jeffries will provide advice to the Panel on a way forward in the wrap up hearing.

9 Contrary to the apparent suggestion in para 4.12 of Ms Fosters' evidence, neither Mr Jeffries or myself contend that the versions of policies ECO-P3 or ECO-P4 recommended in the ECO s42A report should apply to REG activities.

Transpower New Zealand Limited

<u>Pauline Whitney</u>

10 I have read Ms Whitney's evidence and note that she seeks further changes to the Infrastructure – National Grid (INF-NG) chapter.

11 Mr Tom Anderson was the reporting officer for that chapter heard in *Hearing Stream 9 - Infrastructure*.

12 Mr Tom Anderson has advised that the changes proposed by Ms Whitney are at face value supportable.

13 However, the INF-NG has not directly been addressed through this hearing. There may also be interested parties in Ms Whitney's proposals that have not had the opportunity to comment.

14 Accordingly, I recommend that these matters be addressed and reported back as part of the wrap up hearing. Mr Tom Anderson is supportive of this approach.

Sarah Shand

15 I have read Ms Shand's corporate evidence, found it insightful and have no comments.

Horokiwi Quarry

Pauline Whitney

'Outside SNA' clearance rule

Natural justice issues

16 Ms Whitney raises at para 5.6 of her evidence issues of natural justice in respect of my proposed 'outside SNA' rule (ECO-R4) and associated policy (ECO-P8). She compares these issues to those that arise in relation to the possibility of identifying SNAs on residentially-zoned land.

17 I recognise that introducing a new objective, policy and rule set to give effect to policy 8 and clause 3.16 takes a different direction from the notified plan and that accordingly there could be issues of natural justice in taking such a direction.

18 I accept that the implementation of new national direction, such as the NPS-IB, typically proceeds through plan changes given their district-wide implications. Mr Norman's evidence (discussed below) shows that there are significant costs of such a proposal, and that even when parameters for permitted clearance are trebled (to 300m^2) from my recommended proposal (100m^2), the benefits are overwhelmingly exceeded by its costs.

19 This in my view shows inherent flaws in the uncompromising approach to the protection of indigenous biodiversity outside of SNAs in the NPS-IB, which fails to adequately consider the impacts on the urban environment and the enablement of urban development which has also been mandated by recent national policy statement (ie, the NPS-UD).

20 No other District Plan to my knowledge has introduced and tested changes purporting to give effect to policy 8 and clause 3.16, such that I do not have the benefit of considering the merits or risks of previous approaches.

21 It does not appear that the Government will address these provisions under the scope of the SNA review it has determined: Scope of Significant Natural Areas review revealed | Beehive.govt.nz

22 Given that this policy directive is not proposed to be suspended by the upcoming Amendment Bill and is currently in force, there appears little room for the Council to delay addressing this matter. The question is how soon is as soon as practicable. The general directive to strengthen protection of biodiversity will likely be strengthened also through RPS-PC1 decisions, and will likely come to a head if (though most likely when) a decision to defer implementing these provisions is appealed.

23 Part of my rationale for proposing these provisions in my S42A Report was to enable a greater number of participants to comment and bring evidence on them through this hearing. By providing this opportunity, there is the ability to further refine what I have interpreted as being the intent of the relevant NPS-IB provisions, helping to narrow the scope of issues in a more accessible forum than the Environment Court. It is therefore disappointing that no expert evidence to assist the Panel has been received from parties who sought the imposition of a policy and rule framework of this type.

24 I also note that since the NPS-IB was promulgated, the Council has been required to fulfil these 'outside SNA' requirements through resource consenting processes. This has necessarily been in an ad hoc, consent-by-consent way, rather than in a strategic or planned manner. I would therefore prefer that a more enduring plan-led approach is put in place, with the assistance of submitters in this hearing process.

25 In proposing the 'outside SNA' provisions I considered that there was a clear difference of degree in the natural justice issues that arise, compared to the possibility of recommending that SNAs be identified on residential land. I note the following points:

25.1 The proposal allows for a wide range of permitted activities for the maintenance and use of existing buildings and structures etc, unencumbered by permitted standards;

25.2 The proposal allows for greater areas of permitted clearance of vegetation (100m2/3000m2), whereas there would be no such permitted clearance within a residential SNA;

25.3 The policy assessment and resource consent requirements are less restrictive (effects management hierarchy or minimise approach, compared to an avoid framework);

25.4 Resource consents would be precluded from notification (whereas this would not be the case if residential SNAs were identified); and

25.5 The removal of trees is permitted, whereas this would not be the case within a residential SNA.

26 In other words, I do not agree with Ms Whitney that the situations are comparable. I see a material difference of scale or degree as to weight

that should be placed on natural justice factors in the face of clear national direction to be implemented.

27 Ultimately, the Panel has the discretion to consider and make recommendations as to whether implementation of clause 3.16 is appropriate through this hearing process or whether it ought to be put through a separate plan change process.

'Minimise' policy directive

28 I understand Ms Whitney's concern at para 5.7.1 of her evidence is that the definition of 'minimise' (which is for the purpose of managing natural hazard risk) would be applied to the interpretation of the second clause of proposed policy ECO-P8.

29 I had not intended that a minimise *'to the smallest amount reasonably practicable'* lens be applied to this clause.

30 It was my intention that the word be interpreted in a more general 'reduce' or 'lessen' manner. My view was that for effects on biodiversity that are not significant, even mitigation would be unnecessary such that it should not be required.

31 Ms Whitney's suggestion is a valid one to consider and I am not opposed to it. I would be concerned if that directive were to be used to require replacement planting for effects on biodiversity that were less than minor.

Timeframe for implementation date

32 The intent of including a date to which vegetation planted after it does not get captured by the rule is to:

32.1 Avoid disincentivising restoration and replanting; and

32.2 Establish a point in time at which 'no overall loss' of indigenous biodiversity is to be measured from.

33 I appreciate Ms Whitney's concerns at para 5.7.2 that there could be compliance difficulties establishing when vegetation was planted or removed. I see these as inherent challenges associated with the NPS-IB's SNA provisions, and of the CE provisions limiting vegetation loss in the coastal environment.

34 Practically, aerial imagery could be used to provide evidence of when vegetation existed and when it did not, although I realise these sources are not always updated on a regular basis (perhaps only every two years), and therefore there could be some uncertainty.

Tree definition

35 Ms Whitney has helpfully identified that ECO-R4 does not specify whether the carve out due to tree limitations of s76 of the RMA applies to indigenous or exotic trees. The intention was that the 'indigenous' trees be specified in the clauses of the rule, consistent with the title of the rule addressing indigenous vegetation.

36 Exotic trees and exotic vegetation are not addressed by the rule at all, and I have tracked this change in Appendix 4.

37 In respect of the definition of tree, I agree with Ms Whitney that no piece of national direction nor the Act defines the term.

38 I have therefore turned to the Oxford Dictionary Definition of the word which is as follows:

A perennial plant having a self-supporting woody main stem or trunk (which usually develops woody branches at some distance from the ground), and growing to a considerable height and size.

39 The same source distinguishes a tree from a shrub which is defined as

A woody plant smaller than a tree…having several woody stems growing from the same root.

40 And a bush as:

A shrub, particularly one with close branches arising from or near the ground.

41 I have turned my mind to other district plans and whether they have defined tree. I found no definition in the Auckland Unitary Plan, although found a proposed definition in the Christchurch Intensification Planning Instrument but which had been recommended to be deleted by its Independent Hearings Panel. That definition was for the purpose of canopy cover, and financial contributions. it included the 'perennial woody plant' aspect of the Oxford Definition, but also a height trigger of being able to reach at least 5m in height or be a hedge maintained to 1.5m.

42 I also found a definition locally in the Hutt City District Plan for the purpose of distinguishing 'trees' from 'vegetation' for the purpose of its general vegetation clearance rules including in residential zones, as below:

a perennial woody plant species that is at least 3 metres in height or 300mm diameter at breast height

43 'Breast height' essentially refers to the 1.4m height that is used for the purpose of measuring trunk diameter for the purpose of SCHED9 engaged through the ECO standards.

44 If a definition were considered necessary, this would seem to be a sensible option to align with.

45 In simple terms, the implications of using this definition would be that in residential areas, all indigenous vegetation under 3m in height would be

captured by the 'outside SNA clearance rule', but trees 3m in height would not. This is generally consistent with my intent for the rule considering the influence of s76 of the RMA.

Quarry carve-outs ECO-P7 and ECO-R1

46 I acknowledge the issue that Ms Whitney has identified in para 5.16 of her evidence that the zoning of the balance of Horokiwi's landholdings is in a state of flux, and that this would have a relationship to the 'carve outs' I have recommended in ECO-P7 and ECO-R1 for quarrying as an established activity.

47 I had drafted the rule ECO-R1 such that it would align with whatever was zoned 'Quarry zone' in the plan.

48 I am comfortable however given the agreed conferenced outcome between Ms Whitney and Ms Van Haren-Giles (page 16 of Ms Whitney's evidence) that the application of ECO-R1.3 to a wider area (if not the full extent of Horokiwi landholdings) is appropriate, should the Panel be in agreement with them.

49 In respect of Ms Whitney's para 5.19.2, unfortunately a more defined framework for protection of indigenous biodiversity outside SNAs has not been established in the NPS-IB, although it has been within SNAs (particularly through clauses 3.10 and 3.11). ECO-P8 is my attempt to reconcile clause 3.16 in the plan, represented by the changes offered at her para 5.19.3.

ECO-S2 permitted clearance

50 I agree with Ms Whitney that compliance with the permitted activity standards I recommend at ECO-S2 will be difficult to monitor and administer. I consider this to be an inherent difficulty with all permitted standards relating to SNAs and indigenous biodiversity more generally. Realistically, most non-compliance with the standards will go unobserved.

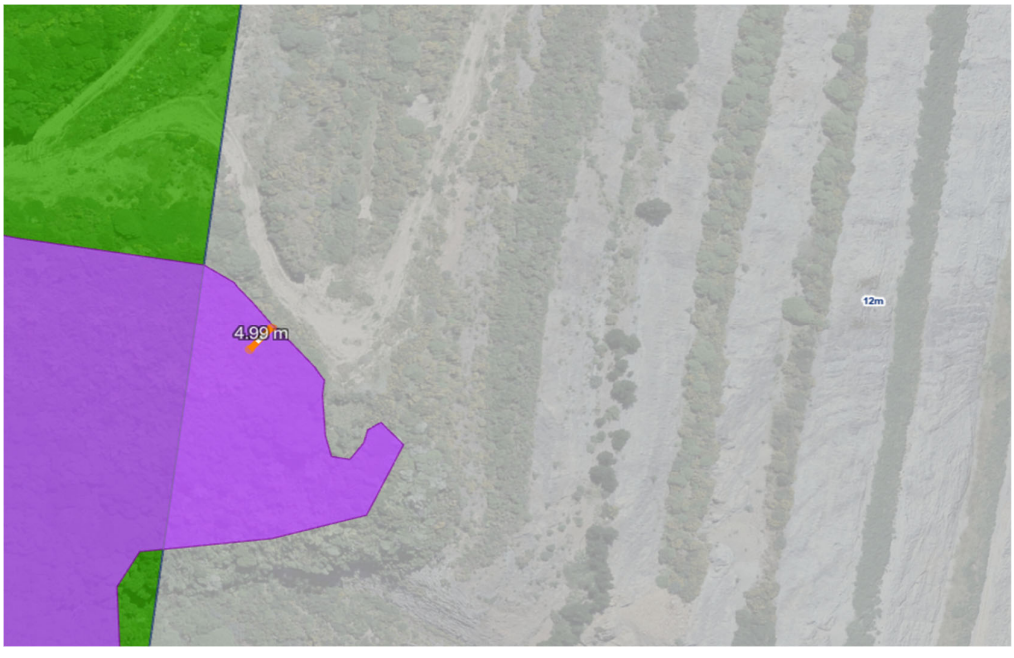
51 My intent in allowing a level of clearance was to assist with situations where a SNA needed to be minimally 'pushed back' where it could interfere with ongoing quarrying operations consistent with clause 3.15 of the NPS-IB. I had envisaged this being around existing access tracks and areas where vehicles are operating. It was not my intent to allow substantial areas of removal where not needed for an existing operational purpose.

52 Ms Whitney has identified that the width or clearance is not very substantial compared to some tracks and recommended a 3000m^2 threshold instead. The concern I have with that approach is that it could lead to areas of clearance that are not directly related to existing operations and lead to extensions of the existing quarry area, contrary to the tight requirements of clause 3.15.1 and clause 3.15.2 of the NPS-IB.

53 I note that generally, SNA boundaries have already been 'snipped' away from existing quarried areas and access tracks.

54 Having heard Ms Whitney's concern, I suggest that the permitted threshold for clearance for quarry operation instead be increased to 5m in width and align with the standards for farm tracks. I have recommended this change in my Appendix 4.

55 Represented on an image of the quarry, the standard would permit clearance like this:



56 The s32AA evaluation at para 635 of my s42A report is appropriate in assessing the impacts of this amendment.

Dr Vaughan Keesing

57 Mr Goldwater has considered Dr Keesing's evidence and has provided a response to it in his rebuttal. Mr Goldwater has agreed with the amendments recommended by Dr Keesing. I agree with that amendment.

Boston Real Estate Limited

Cameron de Leijer

58 Having read Mr de Leijer's evidence I had not fully appreciated the detail of the zoning considerations in relation to this site heard in *Hearing Stream 7 – Open space zones.*

59 I had approached consideration of the extent of the SNA on the site as if there was no contention as to the natural open space zoning of the site.

60 I understand and agree with the reporting officer for this matter in Hearing Stream 7 (Mr Sirl), in regard to why a medium density residential zoning (akin to the zone applied in the operative/2000 district plan) should be applied to that part of the site notified as natural open space zone in the PDP.

61 Mr de Leijer is correct in his assumption in para 16 that, mechanically, the change in zoning from a residential to an open space one was why the SNA was not removed in the area of the site not zoned as the Mixed Use Zone (MUZ) when the plan was notified. It would have been removed from that part of the site had it been identified as a residential zone prior to notification of the PDP.

62 I disagree with the statement in para 17 where it is asserted that the resolution of the Council's Planning and Environment Committee to remove SNAs from residential land has not been followed and that SNAs should not have been identified on the MUZ area of the site.

63 As detailed in para 59 of my section 42A report, resolution 10B of the Planning and Environment Committee directed that SNAs be removed from residentially ***zoned*** *land* (emphasis added), not all areas where residential activities are enabled by the plan.

64 Accordingly, for notification of the PDP, SNAs were removed from the *Residential Zone group* (ie the Large Lot Residential Zone, Medium Density Residential Zone and High-Density Residential Zone). While residential activity is enabled in the MUZ, that zone is not part of the residential zone grouping of the plan nor the higher order *National Planning Standard 8. Zone Framework Standard.*

65 In respect of the SNA on the area notified as Natural Open Space Zone –

65.1 Assuming the Panel are agreeable to returning the zoning to a residential one, I recommend that the SNA be removed from that area of the site. I say this for reasons of consistency with my 42A recommendation, consistently with the Planning and Environment Committee Resolution, that SNAs are not identified on residentially zoned land.

65.2 I also note that Mr de Leijer's evidence states that a certificate of compliance enables clearance of this vegetation. I could not see the certificate of compliance attached as referenced in his evidence but understand it applies to at least this area of the site.

65.3 I note that there are several residential zoned sites on Old Porirua Road and Ngaio Gorge Road that I do not recommend have SNAs identified on them, such that there are already gaps in areas of contiguous protection of the broader SNA.

65.4 I acknowledge that the identification of an SNA on this area of the site is discernibly different to introducing SNAs over

residentially zoned areas through this hearing (in that the owner is obviously aware of the proposal), and there are no natural justice issues.

65.5 I also acknowledge that the entire site is greater than 4000m^2 and has not been subdivided into smaller parcels, such that there would be no 'urban environment allotment' issues under s76 of the Act. Identifying SNAs on the part of this site zoned residential would therefore be lawful and not require the vegetation to be specifically described and identified in a schedule.

65.6 If in the future the area were to be subdivided into lots less than 4000m^2, an additional schedule detailing the groups of trees (like SCHED9 in the draft district plan) would be required for SNA protection to continue to be lawful.

66 In respect of the SNA on the <u>area notified as Mixed Use Zone</u> –

66.1 The question of whether the SNA should be retained on the MUZ area of the site, consistent with how other SNAs have been considered in my s42A report is likely to be one of:

66.1.1 The significance of its values as part of SNA WC079; and

66.1.2 The extent of already authorised clearance.

66.2 I engaged with the submitter and asked whether they wanted a site visit to be undertaken by Mr Goldwater to confirm or disprove the values of the SNA on the site. This offer was rejected.

66.3 Accordingly, the best information I have to hand is that the SNA identified over the MUZ area of the site meets the criteria of the NPS-IB and there are no new ecological reasons why the SNA should be removed. The offer of a site visit remains.

66.4 This area of SNA would total approximately 1200m^2.

66.5 If the certificate of compliance could be produced this would be helpful to understand the extent of clearance already authorised with respect to the identification of the SNA on the remaining portion of the site.

Wellington International Airport Limited (WIAL)

Jo Lester

67 I have read Ms Lester's corporate evidence and found the history and imagery of the Moa Point and Lyall Bay area insightful.

68 I note that the Reporting Officer for *Hearing Stream 9 - Infrastructure* Tom Anderson at para 43 of his Right of Reply agrees with WIAL's position in the RPS process that the seawalls protecting the airport should be included in the definition of 'regionally significant infrastructure' (RSI).

69 The implications of a favourable decision would flow down to the district plan interpretation of 'infrastructure', and they would be accordingly addressed as infrastructure and the INF chapters engaged. I agree with that interpretation.

70 If that is not where the Regional Council lands, the wrap up hearing will need to synthesise recommendations on this matter across the various PDP hearings and determine a final approach.

Dr Michael Anderson

71 Mr Goldwater has considered Dr Anderson's evidence and has provided a response to it in his rebuttal. Mr Goldwater has recommended no change from the notified extents of Lyall Bay dunes WC176 and Moa Point gravel dunes WC175.

72 Dr Anderson's evidence did prompt me to investigate how SNAs have been mapped in relation to mean high water springs (MHWS).

73 It is apparent to me that SNAs have not been mapped to align at their seaward extent with MHWS as identified in the plan. It is clear to me that some overlays (eg the Coastal Environment Overlay and High Tsunami Hazard overlays) have been clipped consistent to MHWS, while the SNA layer has not. I have shown this in Appendix 1.

74 I acknowledge that MHWS as identified in the plan is somewhat of a representative proxy and in the context of a resource consent application should be determined on a case specific basis.

75 For consistency, I recommend that the SNA overlay also terminate at the same seaward extent as the coastal environment and high tsunami hazard lines.

76 I recognise there is an argument to 'leave as is' given I have indicated MHWS changes. But if anything over time it will head landward as sea level rise occurs. On balance I consider it better to align the layer than set an expectation that some reasonably substantially sized areas of coastal SNA are within the jurisdiction of the district plan.

Kirsty O'Sullivan

77 Ms O'Sullivan recommends amendments to INF-ECO-P33 and identifies issues of cross referencing and substance of INF-ECO-P34.

INF-ECO-P33

78 Having read Ms O'Sullivan's commentary in 4.3 – 4.15 of her evidence I agree that amendments should be made to the policy to better reflect clauses 3.15 and 3.11 of the NPS-IB.

79 I agree that the notified (and s42A) version of the policy does not fully reflect the nuance of these clauses of the NPS-IB.

80 Her recommended amendments seek to achieve alignment, namely where:

80.1 Infrastructure can be a 'specified established activity' under clause 3.15; and

80.2 Infrastructure that meets the requirements of 3.11(1)(a)(i) and 3.11(1)(b) and 3.11(1)(c) is able to use the effects management hierarchy.

81 In addition I note that, mechanically, rule INF-ECO-R41 cascades from a permitted to restricted discretionary status and in the absence of amendments there is little useful policy direction in terms of how permitted activity standard contraventions should be assessed other than some generic assessment criteria.

82 The matters of discretion in ECO-R41.2 refer only to assessment criteria and not back to policy direction. As below, I recommended this be consequently amended. Notwithstanding this, the definition of maintenance and repair in the plan as it relates to infrastructure is quite tight insofar as dimensions of new infrastructure must be identical to that being replaced.

83 I accept most of the redrafted policy put forward by Ms O'Sullivan except for:

83.1 What appears to be a grammatical error in the second clause; and

83.2 Amendments to the cross reference to ECO-P5 to address the issue Ms O'Sullivan has identified with INF-ECO-P44 referencing to ECO-P5 (which has a chapeau pointing to ECO-P3 and ECO-P4).

84 Accordingly, my revised position on the policy is as detailed below and in Appendix 5 to this evidence.

> Provide for the operation, maintenance and repair of existing infrastructure within significant natural areas where the activity, including associated earthworks:
>
> 1. Is of a nature and scale that does not adversely affect the biodiversity values; or
> 2. Provides significant national or regional public benefit; and
> 3. Has an operational need or functional need to be in that particular location and where there are no practicable alternative locations for the activity; and
> 4. Adverse effects are managed in accordance with the effects management hierarchy in ECO-P5.1 – ECO-P5.6.

85 I adopt the s32AA evaluation undertaken by Ms O'Sullivan.

INF-ECO-P34

86 Ms O'Sullivan's evidence identifies issues with the cross referencing to ECO-P5 (Effects management hierarchy) and alignment issues with the RPS proceedings and operative NRP.

87 In respect of the cross reference to ECO-P5 I consider this matter is readily addressed by modifying the cross reference to those specific EMH steps within the policy. I have also recommended this change to INF-ECO-P33 above. I consequentially recommend it be made to ECO-P8.1 too for the same reasons.

88 In respect of Ms O'Sullivan's concerns between the relationship between INF-ECO-P34 and RPS-PC1 Policy 24CC –

88.1 I note that that RPS-PC1 Policy 24CC is narrower in scope than INF-ECO-P34 in that the former is focused on *existing regionally significant infrastructure* while the latter on *infrastructure more broadly.*

88.2 These two policies have rather fundamental differences in how effects in the coastal environment are to be addressed.

89 After revisiting the NRP I agree with Ms O'Sullivan that NRP policy 39 sets up a bespoke approach to 'consider providing for' the operation, maintenance, upgrade and extension of existing RSI with a less stringent approach to effects on biodiversity value.

90 After revisiting the RPS-PC1 reporting officer recommendations I can see that this NRP policy has been backfilled and copied word for word into the RPS.

91 It would be a peculiar situation for the Regional Council not to decide to accept the RPS-PC1 reporting officer version of policy 24CC and confirm it in the RPS given it is duplicating a policy it has already determined in the NRP.

92 I can see a view that it would be most efficient to replicate the NRP approach in policy 39 into INF-ECO-P34 now given it is already operational. I assume that it adequately reconciles the tensions between infrastructure development and the protection of the NZCPS.

93 In so far as reconciling these differences now, I agree with Ms O'Sullivan that this is a matter of submission scope and timing.

94 There is no specific submission addressing this particular issue. WIAL's submission sought entire deletion of the policy or alternative amendments, which I have accepted.

95 As this is fundamentally a NZCPS rather than NPS-IB matter, and this balance between RSI and indigenous biodiversity *has not* been set out in such a form in the NZCPS, I do not consider any submissions seeking alignment with the NZCPS give scope to make further changes to INF-ECO-P34.

96 Nor do I think that a route using submissions seeking implementation of RPS-PC1 reporting officer recommendations are defensible given that:

96.1 As noted above, the provision would respond to the NZCPS, rather than NPS-IB which primarily RPS-PC1 has responded to (and the RPS is proposed largely to copy); and

96.2 The provision has not yet been determined.

97 Decisions are now expected to be taken on RPS-PC1 in late September.

98 At the risk of kicking the can down the road, perhaps the best pathway forward is to await RPS-PC1 decisions and (assuming RPS policy 24CC is confirmed) use the wrap up hearing to make changes to INF-ECO-P34 through scope of submissions seeking alignment with the RPS.

99 I suggest that changes could be drafted as follows, but have not included in Appendix 5:

INF-ECO-P34	**Upgrades to existing infrastructure and development of new infrastructure in significant natural areas** Allow for upgrades to existing infrastructure and for new infrastructure within significant natural areas where it can be demonstrated that: 1. There is an operational need or functional need that means the infrastructure's location cannot practicably be avoided; and 2. Any adverse effects on indigenous biodiversity values within a significant natural area are managed ~~applied~~ in accordance with ECO-P5.1 – ECO-P5.6.2 ~~.~~ or ; 3. If the significant natural area is located in the Coastal Environment: a. Avoid adverse effects on the matters in Policy 11(a) of the New Zealand Coastal Policy Statement 2010; and b. Avoid significant adverse effects of activities on the matters in Policy 11(b) of the New Zealand Coastal Policy Statement 2010; and c. Manage other adverse effects accordance with the effects management hierarchy at ECO-P5.1 – ECO-P5.6; or 4. If the significant natural area is located in the Coastal Environment and the works are for the upgrading of existing regionally significant infrastructure: a. The activity provides for the maintenance and, where practicable, the enhancement or restoration of the affected significant indigenous biodiversity values and attributes at, and in proximity to, the affected area, taking into account any consultation with the Wellington Regional Council, the Department of Conservation and mana whenua

Steve West

100 I have read Mr West's evidence and agree with the need for any SNA provisions that apply to residentially zoned land to be workable, that there would be risk that protection could result in a loss of goodwill from owners who have undertaken restoration.

101 It is still my view that a separate plan change process would be the appropriate place to consider the matter of SNAs on residentially zoned land, including Mr West's own property.

Powerco

Chris Horne

102 I note Mr Horne's letter of support on behalf of Powerco and identify that Ms O'Sullivan for WIAL has sought further changes to the S42A

version of the policy Powerco supports. I have agreed with some of Ms O'Sullivan's recommended changes.

Paul Blaschke

103 I have read the article provided by Mr Blaschke, found it insightful and have nothing further to add.

ADVICE ON OTHER MATTERS SINCE PUBLICATION OF S42A REPORT

Lincolnshire Farm

104 On page 73 of my s42A report I noted that I was expecting to receive GIS shape files from Mr Halliday in respect of submission point [25.10].

105 The receipt of these files would allow for consideration of the alignment between:

105.1 The extent of approved earthworks and subdivision consents (SR416511);

105.2 The final zoning pattern conferenced between Mr Halliday and Ms Van Haren-Giles in hearing stream 6 (assuming the panel and eventually Council are agreeable to it); and

105.3 The extent of SNAs in the notified PDP (given that no changes have been recommended by Mr Goldwater).

106 Having compared these layers together, it is apparent there are some areas of conflict.

107 Maps of these areas and their relationships are attached at Appendix 2 and Appendix 3.

SNAs on areas agreed for residential development

108 There are several areas where SNAs have been identified in areas that have been conferenced and agreed for residential development by Mr Halliday and Ms Van Haren-Giles in Hearing Stream 6.

109 While a number of these areas have not yet had approved earthworks or subdivision consents for development, Mr Halliday has indicated that these areas of bush will need to be removed to enable development as set out by the agreed zoning pattern. These areas are circled in orange in Appendices 2 and 3.

110 In my view it is counter to the entire intent of the planned and integrated development approach taken for Lincolnshire Farm to not proactively reconcile the conflict between the SNA layer and the zoning pattern and inevitable outcomes advised by Mr Halliday.

111 In my view, the boundaries of the SNAs identified on Lincolnshire Farm should be amended so that they do not extend onto those areas identified for the medium density residential zone. This is consistent with my s42A recommendation in respect of residential SNAs.

112 Except for a 'finger' of SNA onto what I am advised is to be the school site for the development (the largest orange circle in Appendix 3), these SNAs amendments would be minimal.

113 I acknowledge that I have no ecological advice supporting this amendment, and in the case of the school site 'finger' Mr Goldwater supports retaining the notified extent.

114 I acknowledge that there is a counter argument that, given subdivision or earthworks consents have yet to be applied for in this school site area, future works could be designed to account for the SNA. In addition, the enormous size of the current lot (61 Lincolnshire Road)

means that SNA identification is lawful as it does not conflict with s76(4A) of the RMA.

115 On balance, I am more aligned with the outcome Mr Halliday seeks that this area of SNA be proactively removed to avoid conflict with the conferenced outcomes for this area.

116 In respect of submission scope to make this change, Mr Halliday's submission sought to remove SNAs from the areas covered by an approved earthworks consent. The 'finger' is not one of them as I understand, so scope for this change would be reliant on those submissions seeking SNAs not be identified on residential land.

Vegetation already cleared, or shortly will be, to construct detention ponds

117 Considering the relationship between areas within SNAs already authorised for earthworks, Mr Halliday has identified that there is one area in the western extent of the approved development (identified in Appendix 3 with a blue circle) where vegetation has already been cleared to construct a detention pond. Accordingly, the spatial extent of the SNA in this area is inaccurate.

118 I have asked Mr Halliday to provide a shapefile or indication of the already cleared and earthworked area, which I would be comfortable removing from the notified layer.

119 Relatedly, Mr Halliday has identified that a detention pond will be constructed next year into an area of SNA near Woodridge under the approved consent (identified in Appendix 3 also with a blue circle).

120 Given this would be within the five year period the consent must be exercised, and because I have no reason not to believe that it will, I would be comfortable removing this from the notified layer.

121 I will see that the hearings viewer is updated to reflect these recommended changes as soon as possible.

Amendment to recommended ECO-R4

122 In respect of the s42A recommended proposal, I note that I have fallen into the trap of mixing up 'and' from 'or' in relation to the conjunctions between ECO-R4.1.b and ECO-R4.1.c as well as ECO-R4.2.b and ECO-R4.2.c. These conjunctions should be 'and', rather than 'or' to achieve the intent explained in my s42A report. I have tracked these changes in Appendix 4.

Economic assessment of proposed rule ECO-R4

123 Mr Norman's report is self-explanatory that from a cost benefit perspective, considering the assumptions included in the model, the general indigenous vegetation clearance rule I recommended in my s42A report imposes costs on landowners higher than the community-wide benefits.

124 His evidence shows that there are significant costs of such a proposal, and that even when parameters for permitted clearance are trebled (to 300m2) from my recommended proposal (100m2), the benefits are overwhelmingly exceeded by their costs.

125 What I take from this is that general controls restricting the clearance of vegetation in urban areas are unlikely to be justifiable from a pure cost benefit perspective. However, I do not consider that they fall foul of any s85 reasonable use test considering the wide range of permitted activities and allowance for clearance built into the rule.

126 It appears therefore that even if the permitted size of clearance was substantially increased it is unlikely that a more acceptable cost benefit ratio could be achieved considering the relationship between site sizes,

development potential and vegetation cover. Mr Norman's report shows that there is also a possible impact on housing supply as a result of the proposal, which at the upper end of the range would be 15,000 houses.

127 While that is not a reason in of itself not to pursue such controls, I find this troubling, especially given the distinct lack of analysis or consideration in the regulatory impact statement or section 32 assessment for the NPS-IB where this policy directive stems from.

128 It seems that the costs of resulting proposals and the tensions between urban development and biodiversity protection were not afforded much consideration in the development of the policy position.

129 I have turned my mind again to the alternatives that I discounted in my s42A, including:

129.1 Relying on (or adding to) the various matters of discretion or assessment criteria across the plan addressing indigenous biodiversity, including in the subdivision and earthworks chapter, as well as other limited rules of this type e.g. CE-R6; and

129.2 Taking some comfort that other plan provisions may have some peripheral benefit to indigenous biodiversity in a way that contributes to ensuring no overall loss. These would include new requirements for water sensitive design, permeable surfaces and landscaping requirements for MDRS developments.

130 I originally discounted these options because they:

130.1 Are separated from a purposeful 'trigger' to determine if there could be significant or otherwise adverse effects on

indigenous biodiversity, such that these effects could take place before a resource consent is triggered. Clause 3.16 is not so much concerned with the *quantity* of vegetation removed, rather the *significance of effects* of its removal such that a lot of vegetation could foreseeably be removed without resulting in significant adverse effects;

130.2 Were never promulgated for this purpose so cannot be considered robustly grounded in evidence; and

130.3 Provide no certainty for plan users and applicants at the outset of a resource consent application what they may be required to demonstrate or achieve through the resource consent process with respect to biodiversity outcomes.

131 Given the above, I believe that it would be fair to come to the view that that the provisions already heard and built into the plan are consistent with clause 3.16(3) ***if*** indigenous biodiversity can be maintained so there is no overall loss in the absence of generic vegetation clearance rules.

132 I believe any loss could be amply offset by:

132.1 Natural regeneration;

132.2 The historic and current success of non-regulatory methods in maintaining and restoring indigenous biodiversity in Wellington's urban areas. Much of the urban footprint features extensive and well-established indigenous vegetation despite the absence of regulatory controls to prevent its removal;

132.3 Other reasons why people would not choose to remove indigenous biodiversity ie, because they appreciate it, for

land stability purposes, or because there is no reason to believe that having it on your property will restrict future uses of land (no matter how realistic or feasible they may be). Several submitters, such as Mr Steve West have made this very point.

133 In a Wellington context I think maintenance of current levels of indigenous biodiversity without further rules is well within the realms of possibility given the extent of SNA controls in place and the amount of restoration work that does take place, but I cannot of course be certain. The requirement to take a precautionary approach (policy 3, clause 3.7) tempers my conviction.

134 In conclusion, I can see a scenario in which the panel could consider that:

134.1 The costs of the proposal on a large group of property owners drastically outweigh the comparably small environmental benefits to the community overall;

134.2 No net loss will be achieved in the absence of general vegetation clearance controls;

134.3 Other controls already heard or built into the plan:

134.3.1 Are consistent with the requirements of clause 3.16; and

134.3.2 Find an appropriate balance with the Council and panel's requirements under the NPS-UD.

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