

**BEFORE INDEPENDENT HEARING COMMISSIONERS
WELLINGTON CITY COUNCIL**

**I MUA NGĀ KAIKŌMIHANA WHAKAWĀ MOTUHAKE
TE KAUNIHERA O PŌNEKE**

**In the matter of the proposed Wellington City Proposed
District Plan**

**Between WELLINGTON CITY COUNCIL
Consent Authority**

**And ROYAL FOREST AND BIRD PROTECTION
SOCIETY OF NEW ZEALAND
INCORPORATED
Submitter**

**SUPPLEMENTARY LEGAL SUBMISSIONS ON BEHALF OF ROYAL FOREST AND
BIRD PROTECTION SOCIETY OF NEW ZEALAND INCORPORATED**

HEARING STREAM 11

8 November 2024

Royal Forest and Bird Protection Society of New Zealand

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MAY IT PLEASE THE PANEL

1. These supplementary legal submissions are made on behalf of the Royal Forest and Bird Protection Society of New Zealand Incorporated and relate to the Ecosystems and Indigenous Biodiversity chapter (ECO) of the Proposed Wellington District Plan (the proposed plan).
2. In Minute 59, the Panel allowed submitters to respond to Mr McCutcheon's recommendations:
 4. If any Stream 11 submitter takes issue with Mr McCutcheon's recommendations, either as to matters where he has been prompted by the Regional Council's decisions to shift his position, or where a submitter considers that those decisions should have prompted a shift in position, they have the opportunity to provide us with commentary setting out their position, to be received not later than 1 pm on 7 November.
3. These submissions address paragraph 14 of Mr McCutcheon's further right of reply which provided:
 - 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)).
4. For reasons set out below, it is submitted that this statement is incomplete and requires clarification.
5. Leave is sought to file these supplementary submissions late. Leave is sought on the basis that the timeframe for providing these submissions was extremely tight and Forest & Bird was unable to meet it. The submissions are only one day late and there is no prejudice to any party in accepting these submissions.

SNAs not in the notified plan can now be included in the operative plan

6. Forest & Bird addressed the position regarding SNAs not included in the proposed plan in its legal submissions.
7. This was an issue because the Resource Management (Freshwater and Other Matters) Amendment Bill (the Bill) proposed to add s 76(5) to the RMA which would provide:

- (5) However, an area of significant indigenous vegetation or significant habitat of indigenous fauna that, after commencement, is included in a policy statement, proposed policy statement, plan, proposed plan, or change is not to be treated as an SNA regardless of how it is described in that document.
- 8. Forest & Bird submitted that, if enacted unchanged, the Bill would allow an SNA included in the proposed plan to be included in the operative plan. However, SNAs not included in the proposed plan could not be subsequently added to the operative plan.
- 9. This was because the Bill proposed that s 78(6) of the RMA would provide:
 - (6) This section does not affect any SNAs included in a policy statement, proposed policy statement, plan, proposed plan, or change before commencement (see also clause 40 of Schedule 12).
- 10. The Bill was changed through the legislative process and s 78(6) as enacted in the Resource Management (Freshwater and Other Matters) Amendment Act 2024 (the RMAA) provides:
 - (6) This section does not affect—
 - (a) any NPSIB SNA included in a policy statement, proposed policy statement, plan, proposed plan, or change before commencement (see also clause 40 of Schedule 12); or
 - (b) any of the following matters that commenced but were not completed before commencement (see also clause 40 of Schedule 12):
 - (i) a proposed policy statement, proposed plan, or change (a planning process) that has been notified under Schedule 1; and
 - (ii) the identification, modification, or removal of an area to give effect to decisions on that planning process.
- 11. This is an important change because the RMAA provides that s 78(5) as enacted, retains the prohibition on including SNAs in plans after the commencement of the RMAA. Section 78(5), as enacted, was amended from that proposed in the Bill and provides:
 - (5) However, if, during the 3-year period, a new area of significant indigenous vegetation or significant habitat of indigenous fauna is included in a proposed policy statement, proposed plan, or change, —
 - (a) the new area is not an NPSIB SNA regardless of how it is described in that document; and
 - (b) the NPSIB 2023 does not apply to the new area.

12. Paragraph 14.1 of Mr McCutcheon's further right of reply could be taken as advice that adding new SNAs to the plan is no longer possible. In my submission, this would have been the situation if the Bill had been enacted unchanged. However, the operation of 78(6) means that the Panel can include SNAs in the operative plan that were not in the notified plan.

Implications for Forest & Bird's relief sought

13. At the hearing of Topic 11, Forest & Bird sought that the SNAs mapped for the urban zone but not included in the proposed plan be included in the plan. This submission was conditional on the Bill being amended so that the RMAA as enacted allowed these SNAs to be included in the plan in such a way that they have legal effect as SNAs.

14. The RMAA allows SNAs not included in proposed plans to be included in operative plans, where the plans are notified before 25 October 2024. The condition referred to in Forest & Bird's submissions at the hearing is met. Forest & Bird confirms that it seeks that the SNAs in the urban zone that have been mapped but not included in the proposed plan, are included in the plan.

Dated: 8 November 2024



P Anderson
Counsel for Forest & Bird