

Before the Hearings Commissioners

Under the Resource Management Act 1991 (the **RMA**)

In the matter of a submission by Waka Kotahi NZ Transport Agency
(Submitter S129 and Further Submission FS3) on Plan
Change 1, Hearing Stream 6.

and in the matter of Wellington Regional Policy Statement

**Primary statement of evidence of Catherine Lynda Heppelthwaite for
Waka Kotahi regarding Plan Change 1, Hearing Stream 6 on the
Wellington Regional Policy Statement**

Dated 30 January 2024

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

- 1.0 My full name is Catherine Lynda Heppelthwaite. I am a principal planner for Eclipse Group Limited. I am presenting this planning evidence on behalf of the NZ Transport Agency (**Waka Kotahi**).
- 1.1 I hold a Bachelor Degree in Resource Studies obtained from Lincoln University in 1993. I am a full member of the New Zealand Planning Institute, a member of the Resource Management Law Association and the Acoustical Society of New Zealand. I have more than 25 years' experience within the planning and resource management field which has included work for local authorities, central government agencies, private companies and private individuals. Currently, I am practicing as an independent consultant planner and have done so for the past 18 years.
- 1.2 I have extensive experience with preparing submissions and assessing district and regional plan and policy statements in relation to infrastructure. I am currently assisting Waka Kotahi and KiwiRail in relation to planning processes for the NPSUD and MDRS and other plan changes including (for Waka Kotahi) the Wellington Natural Resources Plan Change 1.

2 CODE OF CONDUCT

- 2.0 I have read the Environment Court's Code of Conduct for Expert Witnesses (2023) and I agree to comply with it. My qualifications as an expert are set out above. I confirm that the issues addressed in this brief of evidence are within my areas of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

3 SCOPE OF EVIDENCE

- 3.0 My evidence will address the following:
- a. The statutory and higher order planning framework;
 - b. Waka Kotahi submissions and further submissions;
 - c. Council's s42A recommendations and evidence; and
 - d. Further amendments required.

3.1 In preparing my evidence, I have considered the Section 42A Hearing Report Hearing Stream 6 (**S42A Report**) on Indigenous Ecosystems prepared by Ms Pamela Guest and Mr Jerome Wyeth¹. I also attended a facilitated meeting² (with Ms Guest, Mr Wyeth and other submitter representatives) to discuss possible changes to PC1 to reflect the NPSIB as gazetted.

4 THE STATUTORY AND HIGHER ORDER PLANNING FRAMEWORK

4.0 In preparing this evidence I have specifically considered the following:

- a. The purpose and principles of the RMA (sections 5-8);
- b. Provisions of the RMA relevant to plan-making and consenting;
- c. National Policy Statement for Indigenous Biodiversity 2023;
- d. National Policy Statement Freshwater 2020 (updated February 2023);
- e. Resource Management (National Environmental Standards for Freshwater) Regulations 2020;
- f. New Zealand Coastal Policy Statement 2010;
- g. National Policy Statement on Urban Development 2020; and
- h. Operative Natural Resources Plan/Plan Change 1.

4.1 In addition, the S42A Report contains a clear description of the relevant statutory provisions³ with which I generally agree or accept and will not repeat here.

¹ Dated 11 December 2023 and updated 19 December 2023 <https://www.gw.govt.nz/assets/Documents/2023/12/S42A-Report-HS6-Indigenous-Ecosystems.pdf> .

² Held online 8 November 2023 and referred to in the S42A report at paragraphs 97.

³ For example Sections 2.1 and 2.2 of the s42A Report.

5 WAKA KOTAHI SUBMISSIONS AND FURTHER SUBMISSIONS

5.0 In summary, the Waka Kotahi primary submission seeks to:

- a. modify Objective 16⁴ to provide for *maintenance* of significant ecosystem functions and services and/or biodiversity values;
- b. modify Policy 24⁵ to provide for *managing* significant ecosystem functions and services and/or biodiversity values;
- c. support Policy 47⁶ but seeks that it aligns with the NPS-IB, also requested clarification as to how GWRC proposes to manage effects; and
- d. support Method IE.3⁷ to enable the operation and maintenance of infrastructure.

5.1 Waka Kotahi also made the following further submissions:

- a. general support for Kainga Ora⁸ who request better clarity is needed on how the objectives and policies will be achieved and seek consistency with the NPS-FM and NPS-IB⁹;
- b. support Porirua City Council¹⁰ who request better consistency with the National Planning Standards;
- c. supported Wellington Water¹¹ who sought a range of methods to provide for delivering regionally significant infrastructure including deletion of provision relating to indigenous biodiversity, updating the RPS to align with the gazetted NPSIB or reflecting the NPSIB exposure draft in the RPS;
- d. support Meridian Energy Limited¹² changes to Policy 24 who propose a more targeted and catchment-based approach to biodiversity offsetting on a case by case basis;

⁴ Submission S129.021.

⁵ Submission S129.022.

⁶ Submission 129.023.

⁷ Submission S129.024.

⁸ Submission S158.043 and S158.024/ FS3.028.

⁹ Submission S158.046.

¹⁰ Submission S30.0116.

¹¹ Submission S113.006 and FS3.014.

¹² Submission S100.016 and FS 3.027.

- e. Support an amendment proposed by Wellington Water¹³ to Policy 24 by either deleting (c) and (d) or replacing (d) with wording which reflects no net loss and preferably a net gain of biodiversity; and
- f. For Appendix 1A (Limits to biodiversity offsetting and biodiversity compensation):
 - i. support Meridian Energy Limited¹⁴ who propose deletion of Appendix 1A; and
 - ii. support Hutt City Council¹⁵ who seek alignment of Appendix 1A with the NPSIB (as gazetted) via deletion and future plan change.

5.2 The S42A Authors address the Waka Kotahi submissions with the following recommendations:

- a. Objective 16: Rejected inclusion of *maintenance* and retained the word *protected* relative to significant ecosystem functions and services and/or biodiversity values; I address this further in Section 6.
- b. Policy 24: Rejected inclusion of *manage* and retain the worded *protected* relative to significant ecosystem functions and services and/or biodiversity values. In addition, part of Policy 24 has been separated into (new) Policy 24A and I address both of these matters further in Section 6.
- c. Policy 47: Has been amended to give effect to the NPS-IB which addresses the Waka Kotahi submission point (specifically by providing for established activities). It has also been updated to reference new Policy 24A. I am generally comfortable with the recommended changes to Policy 47 and do not address this further.
- d. Method IE.3 has mostly been retained with an additional clause (IE.3(ba)) included to reflect restoration outcomes as set out in NPS-IB clause 3.21. I have no concerns with inclusion of IE.3 (ba) and also support the outcomes within (new) IE.3(d).

5.3 Responses to further submissions include:

¹³ Submission S113.016.

¹⁴ Submission S100.027 and FS3.050.

¹⁵ Submission 115.0117 and FS3.051.

- a. Consistency with NPSIB and National Planning Standards (points 5.1 (a), (c) and (d) above): As set out in the S42A¹⁶, changes have been recommended to align PC1 with the gazetted NPSIB including new Policy IE.2A to manage effects on indigenous biodiversity (where not identified as significant under Policy 23). I address IE.2A in Section 6.
- b. Changes to Policy 24 (points 5.1 (e) and (f) above) are included in my Section 6 assessment of Policy 24.
- c. Appendix 1A (point 5.1(g) above) has been retained; I address this in section 6 also.

6 ASSESSMENT

Definition (new): Indigenous ecosystem

6.0 Ms Guest proposes¹⁷ to introduce a new definition for *Indigenous ecosystem*. While I agree a definition is beneficial, I prefer closer alignment to the Ministry for Environment's definition of *native ecosystem (indigenous ecosystem)*¹⁸ ahead of indigenous natural character as the MfE terminology is more specific to the context of the NPS-IB. The term *natural character* is also used in other documents with reference to landscape character (eg. NZCPS Policy Objective 2 and Policy 13 *Preservation of natural character*)

Indigenous ecosystem: An ecosystem dominated ~~with a dominant~~ by native species that occurred in the area prior to human arrival. ~~or significant indigenous natural character~~

(Base text Ms Guest's S42A recommendation, my changes in red underline/strikethrough)

¹⁶ For example, S42A Report, paragraphs 4 and 5 and Section 3.5.2 and Appendix 3.

¹⁷ S42A Report, paragraph 119.

¹⁸ *Native ecosystem (indigenous ecosystem): A native ecosystem is one dominated by native plants, animals and microorganisms that occurred together before the time of human settlement. Key native species must be present for a native ecosystem to persist and function on its own.* <https://environment.govt.nz/facts-and-science/science-and-data/environment-and-climate-research-strategy/environment-and-climate-research-strategy-definitions-of-terms/>

Objective 16

- 6.1 Ms Guest recommends changes to Objective 16 which include:
- a. broadening of Objective 16 to include ecosystem functions which support significant indigenous biodiversity/habitats and including specific reference to *other* significant habitats of indigenous fauna; and
 - b. deletion of *maintained* when referring to indigenous ecosystems and habitats with significant biodiversity values / fauna and supporting ecosystem functions.

Objective 16

Indigenous ecosystems and habitats with significant ~~ecosystem functions and services~~ ~~and/or indigenous~~ biodiversity values, ~~other significant habitats of indigenous fauna, and the ecosystem functions that support these ecosystems and habitats,~~ are ~~maintained~~ *protected, enhanced, and restored* to a healthy functioning state.

(Ms Guest's S42A Recommendation)

- 6.2 Objective 16 proposes to address areas of “significant” indigenous biodiversity (as variously described within RMA Section 6(c), the NPS-IB¹⁹, NPS-FW²⁰ and NZCPS²¹) and sits alongside Objective 16A which addresses indigenous biodiversity which is not “significant”. I have made a detailed assessment of the NPS-IB, NPS-FW and NZCPS provisions relative to “significant” indigenous biodiversity and agree they reflect a ‘protection’ approach which has been included in Objective 16.
- 6.3 Objective 16 also sets out that “significant” indigenous biodiversity is *enhanced* and *restored* to a healthy functioning state. I have not found the same degree of (mandatory) support for these outcomes within the NPS-IB, NPS-FW or NZCPS. Wording in these NPSs tend towards more discretionary language when addressing enhancing and restoring. In particular the terms, ‘as necessary’ ‘promoted’ and ‘where practicable’ are utilised when referred to enhancing and restoring (as set out in Attachment B, Table 1).

¹⁹ NPS-IB Objective 1 requires protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity (on a national basis). This is to be achieved by identifying SNAs and protecting by avoiding or managing adverse effects (Policy 7). Indigenous biodiversity outside of SNAs is to be maintained (Policy 8), provides for maintenance of indigenous biodiversity.

²⁰ NPS-FW requires, among other things, no further loss of natural wetlands and that their values are protected (Policy 6) and, indigenous freshwater species habitat is protected (Policy 9).

²¹ NZCPS Objective 1 requires protection of indigenous biological diversity by avoiding effects on specific environs and fauna (Policy 11(a)) and applies a hierarchy (avoid specific effects and avoid remedy mitigate other effects) on other identified environs/fauna (Policy 11(b)).

- 6.4 I recommend that the *enhance and restore* concepts are better addressed at a policy level (as a way to achieve the ‘protect’ outcome of Objective 16). This is already reflected within the S42A recommended versions of Policies 24, 24A and 47.

Objective 16: Indigenous ecosystems and habitats with significant indigenous biodiversity values, other significant habitats of indigenous fauna, and the ecosystem functions that support these ecosystems and habitats, are protected, ~~enhanced, and restored to a healthy functioning state.~~

(Base text Ms Guest’s S42A recommendation, my changes in red underline/strikethrough)

Policy 24

- 6.5 I agree with the approach to separate Policy 24 into Policy 24 (directions on plan provisions) and Policy 24A (direction of offsetting and compensation).
- 6.6 I consider this separation makes the purpose of both policies much clearer and while Policy 24 does include a cross referencing approach, this avoids detailed replication or reinterpretation.
- 6.7 Policy 24 provides further direction on the ‘protect’ outcome within Objective 16 and inclusion of clauses (a) to (c) accommodate various methods of ‘protection’. For example, within clause (b) there is reference to:
- a. NPSIB Clause 3.10(2) which describes the type of adverse effects which must be avoided by new activities²²; and
 - b. NPSIB Clause 3.10(3) and (4) provide an effects management hierarchy for other effects (beyond those listed in clause 3.10(2)) and effects of activities excluded from 3.10(2) under 3.11.
- 6.8 I consider it is critical to retain clauses (a) to (c) as these reflect the nuances of the various ‘protect’ requirements eg. for the NPISB (Policy 24(a)), that ‘protect’ is implemented in the context of Clause 3.10 and 3.11 (as directed by NPSIB Policy 7) and not interpreted as an outright preclusion (protection) on changes to significant indigenous biodiversity. In this regard I support Policy 24.

²² Activities being *subdivision, use or development*.

Policy IE.2A

- 6.9 Policy IE.2A has been introduced to implement both the NPS-IB and RMA section 30(1)(c)(iia) and (ga) and section 31(b)(iii) of the RMA²³.
- 6.10 In my view, subclause (a) does not add anything and could be deleted as long as reference to Policy 23 is including in the prefacing text (as it directs where Policy IE.2A would apply).
- 6.11 I also consider that the last part of the explanation can be deleted as it replicates part of the first sentence (*maintain indigenous biodiversity*) and describes the reason the policy was introduced rather than how it is to be implemented.

Policy IE.2A – Maintaining indigenous biodiversity – consideration

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan or regional plan, indigenous biodiversity in the terrestrial environment that does not have significant indigenous biodiversity values (identified under Policy 23) and is not on Māori land, shall be maintained by:

~~*(a) recognising and providing for the importance of maintaining indigenous biodiversity that does not have significant biodiversity values under Policy 23;*~~

(a) ~~(b)~~ managing any significant adverse effects on indigenous biodiversity from any proposed activity by applying the effects management hierarchy in the National Policy Statement for Indigenous Biodiversity 2023; and

(b) ~~(c)~~ managing all other adverse effects on indigenous biodiversity from any proposed activity to achieve at least no overall loss in indigenous biodiversity within the region or district as applicable.

Explanation

Policy IE.2A recognises that it is important to maintain indigenous biodiversity that does not have significant indigenous biodiversity values

²³ S42A Report paragraph 82.

to meet the requirements in section 30(1)(ga) and section 31(b)(iii) of the RMA. This policy applies to indigenous biodiversity that does not have significant values in the terrestrial environment, ~~and requires a more robust approach to managing any significant adverse effects on indigenous biodiversity from a proposed activity and to maintain indigenous biodiversity more generally.~~

(Base text Ms Guest's S42A recommendation, my changes in red underline/strikethrough)

Anticipated Environmental Results (AER)

- 6.12 Amendments to AER (3) are proposed to include *extent or condition*. This AER may be unattainable as Clause 3.11 provides (some) consenting pathways for the *extent (physical location) or condition* of the significant indigenous ecosystem/habitat or supporting functions to be potentially altered, reduced or removed.
- 6.13 Accepting that the effects management hierarchy is designed to support *no net loss*, the implementation of the effects management hierarchy may result in offset / compensation which does not have the same spatial 'extent' or results in a different 'condition' of identified significant indigenous ecosystem/habitat or supporting functions.
- 6.14 I recommend not adding *extent or condition of* to AER(3) to enable changes (but not net loss) to the significant indigenous ecosystem/habitat or supporting functions which may result from consent pathways within Clause 3.11.

3. There is no loss of ~~extent or condition of~~ indigenous ecosystems and habitats with significant indigenous biodiversity values and other significant habitats of indigenous fauna, and their ecosystem functions.

(Base text Ms Guest's S42A recommendation, my changes in underline/strikethrough)

Appendix 1A / Table 17

- 6.15 Mr Wyeth has recommended amending Table 17 headings to identify situations (Policy 24A(b)) he considers it is not feasible to offset for residual

adverse effects. Mr Wyeth identifies this as the alternative to allowing for an assessment under Policy 24²⁴.

- 6.16 The need to identify parameters or sites as “significant’ is acknowledged. However at a principles level, the specificity proposed in Table 17 sets up a rigid approach which does not provide for (timely) changes to adapt to circumstances where technical information or approaches to offset have advanced.
- 6.17 This lack of flexibility is reflected (in part) by the Director General of Conservation (**DGC**) submission²⁵ indicating that the threat classification listed within Table 17 may change over time. While DGC’s submission has been addressed by Mr Wyeth (who proposes wording to direct plan users to the most up to date threat classification rather than rely on Table 17²⁶), it does not address the rigidity of the application of the Column headed *Policy 24A(b) No appropriate site, knowledge, methods, expertise, mechanism* (which identifies where offsetting cannot be applied to residual adverse effects).
- 6.18 I do not support an approach which, while providing certainty, has little ability to adapt in a timely manner. This leaves little room to accommodate technical advances and may in itself discourage advances by simply not allowing them to be assessed or adopted. I recommend removal of the column *Policy 24A(b) No appropriate site, knowledge, methods, expertise, mechanism*⁵ along with any consequential amendments.
- 6.19 I make this recommendation noting that NPSIB Appendix 3(2)²⁷ and Appendix 4(2)²⁸ both set out that offsetting and compensation (respectively) have limits but note that the Appendices provide examples of circumstances where it is not appropriate and, particularly (b) and (c) (both Appendices), allow for an assessment and judgement on the specific circumstances.

²⁴ S42A Report paragraph 325.

²⁵ S32.037

²⁶ S42A Report, Appendix 1, page 27: *Note that the species list will change over time as national threat lists are updated or more knowledge is gained about the presence or absence of a species in the Wellington Region. The most up-to-date threat classification should be used at the time of making an assessment under Policy 24A or Policy 47 (h) and (i).*

²⁷ *When biodiversity offsetting is not appropriate*

²⁸ *When biodiversity compensation is not appropriate*

7 CONCLUSION

7.0 In conclusion, I consider the following further amendments should to the S42A Report recommended provisions:

- a. Modify the definition of indigenous ecosystem to more closely align with the MfE definition of native ecosystem (indigenous ecosystem);
- b. Amend Objective 16 to remove 'enhance and restore' as these have a different directive to 'protect' in respective national policy statements and are reflected within Policy 24, 24A and 47;
- c. Retain Policy 24 and Policy 24A as separate policies and retain the Policy 24 (a) to (c) in Policy 24;
- d. Amend Policy IE.2A to make it more concise;
- e. Amendments to AER (3) are proposed to remove *extent or condition*; and
- f. Deletion of the column titled *Policy 24A(b) (a)(i) No appropriate site, knowledge, methods, expertise, mechanism* (and associated footnote 5) from Appendix 1A, Table 17 with any consequential amendments.

Cath Heppelthwaite

30 January 2024

Attachment A: Recommended Amendments

Base text Ms Guest's S42A recommendation, recommended changes in red underline/strikethrough)

Definitions

Indigenous ecosystem: An ecosystem dominated ~~with a dominant~~ by native species that occurred in the area prior to human arrival. ~~or significant indigenous natural character~~

Objective 16

Indigenous ecosystems and habitats with significant indigenous biodiversity values, other significant habitats of indigenous fauna, and the ecosystem functions that support these ecosystems and habitats, are protected, ~~enhanced, and restored to a healthy functioning state.~~

Policy IE.2A – Maintaining indigenous biodiversity – consideration

When considering an application for a resource consent, notice of requirement, or a plan change, variation or review of a district plan or regional plan, indigenous biodiversity in the terrestrial environment that does not have significant indigenous biodiversity values (identified under Policy 23) and is not on Māori land, shall be maintained by:

~~(a) recognising and providing for the importance of maintaining indigenous biodiversity that does not have significant biodiversity values under Policy 23;~~

~~(a)~~ (b) managing any significant adverse effects on indigenous biodiversity from any proposed activity by applying the effects management hierarchy in the National Policy Statement for Indigenous Biodiversity 2023; and

~~(b)~~ (e) managing all other adverse effects on indigenous biodiversity from any proposed activity to achieve at least no overall loss in indigenous biodiversity within the region or district as applicable.

Explanation

Policy IE.2A recognises that it is important to maintain indigenous biodiversity that does not have significant indigenous biodiversity values to meet the requirements in section 30(1)(ga) and section 31(b)(iii) of the RMA. This policy applies to indigenous biodiversity that does not have significant values in the terrestrial environment, ~~and requires a more robust approach to managing any significant adverse effects on indigenous biodiversity from a proposed activity and to maintain indigenous biodiversity more generally.~~

Anticipated Environmental Results

3. There is no loss of ~~extent or condition of~~ indigenous ecosystems and habitats with significant indigenous biodiversity values and other significant habitats of indigenous fauna, and their ecosystem functions.

Appendix 1A: Limits to biodiversity offsetting and biodiversity compensation

Table 17: Ecosystems and species that either meet or exceed the limits to the use of biodiversity offsetting and biodiversity compensation in the Wellington Region (there are some duplicates of ecosystems and species as some habitats relate to more than one ecosystem type).

Wetland ecosystems

Ecosystem or species name	Policy 24A(b)&(c) (a)(ii) Threatened species or ecosystem or naturally uncommon ecosystem (Threat Status)	Policy 24A(b) (a)(i) No appropriate site, knowledge, methods, expertise, mechanism⁵	NZCPS Policy 11(a)
Coastal Turfs	Critically Endangered	Yes	Yes
[...]	[...]	[...] Delete remainder of column	[...]

Attachment B: Table 1

Policy	Provision (bold emphasis added)
NPS-IB	<p>2.1 Objective (1) The objective of this National Policy Statement is: (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and (b) to achieve this: [...] (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and</p> <p>Policy 13: Restoration of indigenous biodiversity is promoted and provided for.</p>
NPS-FW	<p>1.3 Fundamental concept – Te Mana o te Wai (Principles) (4) (b) Kaitiakitanga: the obligations of tangata whenua to preserve, restore, enhance, and sustainably use freshwater for the benefit of present and future generations</p> <p>Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.</p> <p>(also in CI 3.22(1) “promoted”)</p> <p>CI 3.22 (4) Every regional council must make or change its regional plan to include objectives, policies, and methods that provide for and promote the restoration of natural inland wetlands in its region, with a particular focus on restoring the values of ecosystem health, indigenous biodiversity, hydrological functioning, Māori freshwater values, and amenity values.</p>
NZCPS	<p>Objective 1 To safeguard the integrity, form, functioning and resilience of the coastal environment and sustain its ecosystems, including marine and intertidal areas, estuaries, dunes and land, by: • maintaining or enhancing natural biological and physical processes in the coastal environment [...] • maintaining coastal water quality, and enhancing it where it has deteriorated from what would otherwise be its natural condition, with significant adverse effects on ecology and habitat, because of discharges associated with human activity.</p> <p>Policy 14 Restoration of natural character Promote restoration or rehabilitation of the natural character of the coastal environment, including by : [...] (c) where practicable, imposing or reviewing restoration or rehabilitation conditions on resource consents and designations, including for the continuation of activities; and recognising that where degraded areas of the coastal environment require restoration or rehabilitation, possible approaches include: [...] (iii) creating or enhancing habitat for indigenous species; or</p>