

**BEFORE THE INDEPENDENT HEARINGS PANELS APPOINTED TO HEAR AND MAKE  
RECOMMENDATIONS ON SUBMISSIONS AND FURTHER SUBMISSIONS ON PROPOSED CHANGE 1  
TO THE REGIONAL POLICY STATEMENT FOR THE WELLINGTON REGION**

**UNDER** Schedule 1 of the Resource Management  
Act 1991 (the Act)

**IN THE MATTER OF** Hearing Submissions and Further  
Submissions on Proposed Change 1 to the  
Regional Policy Statement for the  
Wellington Region

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**STATEMENT OF REBUTTAL EVIDENCE OF JEROME GEOFFREY  
WYETH**

**ON BEHALF OF WELLINGTON REGIONAL COUNCIL**

**HEARING STREAM SIX – INDIGENOUS ECOSYSTEMS**

**13 February 2023**

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## INTRODUCTION

- 1 My full name is Jerome Geoffrey Wyeth. I am a Principal Planning and Policy Consulting at SLR Consulting (formally 4Sight Consulting). I jointly prepared the section 42A report for Hearing Stream 6 - Indigenous Ecosystems (section 42A report) with Ms Guest.
- 2 I have read the respective planning evidence and legal submissions (that relate to planning issues) on Hearing Stream 6 (HS6) from:
  - 2.1 Director-General of Conservation (DGC).
  - 2.2 Meridian Energy Limited (Meridian).
  - 2.3 Ngā Hapū o Ōtaki (Ngā Hapū).
  - 2.4 Porirua City Council (PCC).
  - 2.5 Rangitāne o Wairarapa (Rangitāne).
  - 2.1 Royal Forest and Bird Protection Society Incorporated (Forest and Bird).
  - 2.2 Transpower New Zealand Limited (Transpower).
  - 2.3 Wairarapa Federated Farmers (WFF).
  - 2.4 Waka Kotahi – NZ Transport Agency (Waka Kotahi).
  - 2.5 Wellington International Airport Limited (WIAL).
  - 2.6 Winstone Aggregates (Winstone).
- 3 This rebuttal evidence addresses the following issues and provisions being considered in HS6:
  - 3.1 Giving effect to the National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB) and withdrawing/retaining indigenous ecosystem provisions (Issue 2 in the section 42A report).
  - 3.2 Policy 24 (Issue 10 in the section 42A report).
  - 3.3 Policy 24A and Appendix 1A (Issue 10 in the section 42A report)
  - 3.4 Renewable electricity generation and transmission (Issue 10 in the section 42A report)

3.5 Policy IE.3A (Issue 2 in the section 42A report).

4 Ms Guest addresses the remaining issues and provisions being considered in HS6 in her rebuttal evidence and I have worked closely with Ms Guest in developing the recommendations in this evidence.

#### **QUALIFICATIONS AND EXPERIENCE**

5 My qualifications and experience are set out in paragraphs 25-33 of the section 42A report, dated 11 December 2023. I repeat the confirmation given in that report that I have read and agree to comply with the Code of Conduct for Expert Witnesses.

#### **RESPONSES TO EXPERT EVIDENCE AND LEGAL SUBMISSIONS**

6 This section responds to submitter evidence and legal submissions (that relate to planning issues) in relation to the HS6 issues and provisions outlined in paragraph 3 above. The recommended amendments to the Change 1 provisions in the section 42A report are shown in red underlined marked-out and further recommended amendments in this rebuttal evidence are shown in blue underlined marked-out. Appendix 1 of Ms Guest's evidence provides a consolidated version of the recommended amendments to the Indigenous Ecosystem provisions in Change 1 as a result of our combined section 42A and rebuttal evidence recommendations.

#### **Giving effect to the NPS-IB and withdrawing/retaining indigenous ecosystem provisions from Change 1 (Issue 2 in the section 42A report)**

7 This issue is addressed in the evidence of DGC, HCC, Forest and Bird, Rangitāne, WCC and Winstone.

#### Director General of Conservation

8 The planning evidence of Mr Brass on behalf of DGC supports the recommended proposed in the section 42A report to give effect to the NPS-IB. Mr Brass considers that:

8.1 The proposed changes are appropriate to achieve the purpose of the RMA.

8.2 Giving effect to the NPS-IB does not require "all or nothing" compliance/implementation approach and there are no barriers to making amendments now through Change 1 which do not give full and final effect to the NPS-IB.

- 9 Mr Brass also notes that the drivers for the Indigenous Ecosystem provisions in Change 1 pre-date the NPS-IB, so are not dependent on it and that these provisions have gone through the full Schedule 1 RMA process.

#### Hutt City Council

- 10 The planning evidence of Mr McDonnell on behalf of HCC agrees with several aspects of my recommended approach and reasoning to give effect to the NPS-IB in the section 42A report. This includes the clear direction in the RMA to protect indigenous biodiversity and the need to give effect to the NPS-IB as soon as reasonably practicable. However, with respect to the approach to cross-referencing or paraphrasing highly directive NPS-IB provisions recommended in the section 42A report, Mr McDonnell's view is that:

- 10.1 The role of an RPS is to articulate what national direction means at a regional level or to fill a gap where there is an absence of national direction.
- 10.2 The NPS-IB is so comprehensive that there is little need to reinterpret or provide additional direction at a RPS level.
- 10.3 Cross-referencing and paraphrasing higher level documents is not good planning practice as it adds unnecessary length and complexity to plans.
- 10.4 Cross-referencing NPS-IB provisions will not work if these are subsequently repealed as indicated by the new Government. This would require a further RPS change, which is inefficient and will result in regulatory uncertainty.

- 11 On this basis, Mr McDonnell considers that amendments to give effect to the NPS-IB should only be made where Change 1 provisions are inconsistent with the NPS-IB or where additional, specific regional direction is required. Mr McDonnell considers that Change 1 should not repeat, paraphrase or cross-reference national direction for the sake of it, and consequently recommends that such amendments are deleted from Change 1 (e.g. recommended amendments in Policy 23, Policy 24, Policy 24A).

#### Rangitāne

- 12 The planning evidence of Ms Burns on behalf of Rangitāne supports the recommendations and reasoning in the section 42A report for retaining the Indigenous Ecosystems provisions in Change 1 and considers that there are clear legal requirements to give effect to the NPS-IB where practicable and within scope. Ms Burns also agrees with my

statement in the section 42A report that there is a high level of certainty that giving effect to certain NPS-IB provisions through Change 1 will help meet key statutory requirements in the RMA.

#### Wellington City Council

- 13 The evidence of Ms Cook on behalf of WCC raises several concerns with the recommended approach to give effect to the NPS-IB through Change 1, including:
- 13.1 There has not been sufficient evaluation of whether the changes are necessary or add value in giving effect to the NPS-IB objective.
  - 13.2 The proposed amendments largely paraphrase or repeat NPS-IB provisions without adding regional specific direction, which should be the core purpose of any RPS amendments.
  - 13.3 Giving effect to the NPS-IB should be reserved for situations where specific regional interpretation is warranted so that lower order documents can reflect this nuance to achieve national and regional consistency.
  - 13.4 Submissions that seek to implement or align with the NPS-IB through Change 1 should not be given strong weighting as the NPS-IB was not in force when Change 1 was notified.
  - 13.5 There are potential natural justice issues associated with inserting new provisions in the RPS through Change 1 to give effect to the NPS-IB.
- 14 Ms Cook also identifies examples of NPS-IB provisions that require amendments to RPS that have not been given effect to through Change 1 (Clause 3.20, Clause 3.22, Clause 3.23) which she considers are fundamental to achieving a robust regional policy framework for managing indigenous biodiversity. Based on these concerns, Ms Cook considers that it is more appropriate to delay any changes through Change 1 and implement the NPS-IB in full through a separate variation or RPS change process.

#### Winstone Aggregates

- 15 Ms Clarke on behalf of Winstone raises similar concerns to WCC about the approach to give effect to the NPS-IB. Ms Clarke considers that careful consideration must be given to the NPS-IB as a whole when proposing any changes to give effect to certain NPS-IB

provisions. Ms Clarke also raises the following concerns with the recommended amendments in the section 42A report:

- 15.1 Amendments that give effect to new or amended NPS-IB provisions (e.g. the decision-making principles) are problematic as these have not been subject to full and meaningful community engagement.
  - 15.2 Amendments that effectively restate the direction in the NPS-IB, which is not inconsistent with good planning practice and leading case law (*Port Otago*<sup>1</sup>). Ms Clarke considers that the role of the RPS in implementing national direction is to provide local context and reconcile conflicting higher order direction.
- 16 In terms of the approach to give effect to the NPS-IB, Ms Clark indicates a preference for recommended amendments that cross-reference higher-order documents as this avoids potential “parroting” of higher order direction within the RPS. However, Ms Clarke raises questions as to whether this approach is consistent with Clause 34, Schedule 1 of the RMA, which sets out a prescribed process for consulting on plan provisions that incorporate material by reference.
- 17 Given these concerns, Ms Clarke requests that the Panels consider delaying any changes to the Indigenous Ecosystem provisions through Change 1 to allow full and meaningful engagement with the community and to ensure any additional statutory requirements are met.

#### Analysis and recommendations

- 18 I consider that there are two main issues to respond to in the submitter evidence summarised above:
- 18.1 **Issue 1** - Whether Change 1 should include amendments to the Indigenous Ecosystem provisions or delay any amendments to a future variation or RPS change in order to give effect to the NPS-IB in full (as requested by WCC and Winstone).
  - 18.2 **Issue 2** - The approach to give effect to NPS-IB provisions, of which there are divergent views between submitters, including:

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<sup>1</sup> *Port Otago Ltd v Environmental Defence Society Inc.* [2023] NZSC 112 [24 August 2023]

- 18.2.1 Adding more regional specificity and addressing conflicts with other national direction where necessary/appropriate.
- 18.2.2 Making no amendments/staying silent (i.e. no cross-referencing or paraphrasing).
- 18.2.3 Cross-referencing NPS-IB provisions rather than duplicating these in the RPS.
- 18.2.4 Repeating NPS-IB provisions (with minor amendments to align wording with RPS as appropriate).

19 In relation to Issue 1 above, there is nothing in the evidence of WCC and Winstone that has altered my opinion that Change 1 should give effect to NPS-IB provisions where practicable and within scope. The reasons for this recommendation are set out in detail in the section 42A report (paragraphs 87-91) and are not repeated in this evidence. I also note that my recommended approach to give effect to certain NPS-IB provisions now through Change 1 is broadly supported by the majority of submitters that have provided evidence. In response to the evidence of Ms Cook, I also note that Appendix 3 of the section 42A reports sets out the reasons why Clause 3.20, Clause 3.22 and Clause 3.23 need to be given effect to through a future RPS change as these require further technical work and engagement.

20 In relation to Issue 2 above, there are clearly divergent views on how the RPS should give effect to the highly directive NPS-IB provisions. I completely agree with submitters that giving effect to an NPS through lower order documents should seek to add regional and local context where appropriate and resolve any conflicts in higher order provisions through a careful, structured analysis as directed by the Supreme Court in *Port Otago*<sup>2</sup>, as I discussed in paragraph 96 of the section 42A report. This is the intent of Policy 24A and Appendix 1A in relation to offsetting and compensation as discussed further below.

21 However, for highly directive provisions such as Clause 3.10 and 3.11 of the NPS-IB, I remain of the opinion there is very limited scope to add any additional regional context to the avoid policy direction and pathways for specified activities that have been subject to extensive testing and refinement throughout the development of the NPS-IB with a range of stakeholders. As outlined in paragraph 94 of the section 42A report, in my opinion a

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<sup>2</sup> *Port Otago Ltd v Environmental Defence Society Inc* [2023] NZSC 112.



more efficient and effective approach for all parties to implement such highly directive NPS provisions would be for these to be directly inserted into the RPS and plans under section 55(2) and (2A) of the RMA. However, there is no such direction in the NPS-IB and most of the NPS-IB provisions direct changes to RPS (which is assessed in detail in Appendix 3 of the section 42A report). Therefore, I consider there are three main options to give effect to the highly directive NPS-IB provisions (i.e. stay silent, cross-reference, repeat with minor amendments), all of which have potential benefits and limitations.

22 I do not recommend that the RPS says silent on the effects management hierarchies for significant indigenous biodiversity values in the NPS-FM, NPS-IB or NZCPS. In my opinion, this would not meet the statutory obligation for the RPS to “give effect to” these higher order documents under section 62(3) of the RMA. It is also likely to create some confusion as to whether Policy 24 (and other RPS policies) have given effect these higher order documents and how these NPS and RRS policies should be given effect to in lower order plans.

23 In terms of the other two options (cross-reference NPS-IB provisions or repeat with minor modifications for RPS alignment), I understand that both approaches are legally valid and that cross-referencing NPS provisions at a particular point in time (e.g. NPS-IB 2023) would endure even if that NPS is subsequently amended or repealed. I also understand that both approaches would require a Schedule 1 RMA process to amend the relevant RPS provisions if the Council wanted or needed to make changes to reflect new or amended national direction.

24 Therefore, in my opinion, the key considerations in these two drafting approaches relate to efficiency, certainty, longevity and useability of the amended provisions for all RPS users. I have already discussed the pros and cons of these two drafting options in paragraphs 94 to 96 and 305 to 308 of the section 42A report, which I do not repeat here. Additionally, I note that repeating the relevant NPS provisions (with minor amendments as appropriate) may have the following benefits:

24.1 It would help align language with other relevant RPS provisions. In particular, it would enable Policy 24 to refer to “indigenous ecosystems and habitats with significant biodiversity values” consistent with Policy 23 rather than an indirect

reference to significant natural areas (SNAs) through cross referencing Clauses 3.10 and 3.11 of the NPS-IB<sup>3</sup>.

- 24.2 The drafting approach is more aligned with the recommendations of Ms Pascall in Hearing Stream 5 for Policy 18A and Policy 18B so may help achieve greater consistency in RPS provisions (which could be considered further through Hearing Stream 7: Wrap up and integration).
- 24.3 It will be easier for RPS users to identify the relevant requirements rather than referencing multiple documents. This is particularly important if a referenced NPS provision is amended or repealed as there will be a need to locate superseded NPS versions (which can be problematic).
- 25 I also note that this more detailed drafting approach to replicate NPS-IB provisions has been recommended by the reporting officer for the Otago RPS hearings, where implementation of the NPS-IB was subject to a specific hearing at the request of Otago Regional Council.
- 26 Based on these additional considerations, I recommend that the Panels consider a different drafting approach for Policy 24 – i.e. essentially repeating the relevant NPS-IB provisions (Clause 3.10, Clause 3.10, Appendix 3 and 4) and NZCPS Policy 11 with minor wording modifications as discussed further below and shown in full in Appendix 1 of Ms Guest’s evidence. This recommendation also applies to Policy 23, which is discussed further in the rebuttal evidence of Ms Guest.

#### Section 32AA evaluation

- 27 I do not consider a section 32AA evaluation is required in relation to the above recommendation as there is no change to the actual substance of the Change 1 provisions, rather this is a recommended change in drafting approach to incorporate the NPS-IB provisions into the RPS rather than cross-reference them.

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<sup>3</sup> The definition of SNAs in the NPS-IB could create some confusion as this includes areas of significant indigenous biodiversity in district plans at commencement date or SNAs identified in accordance with the NPS-IB. The relationship with areas identified under Policy 23 of the RPS could therefore be unclear without supporting explanation.

## **Policy 24 (Issue 10 in the section 42A report)**

28 Policy 24 is addressed in the evidence of DGC, Forest and Bird, Nga Hapū, Rangitāne, Waka Kotahi, WCC, WFF, WIAL, and Winstone.

### Director General of Conservation

29 Mr Brass notes that he is generally comfortable with the recommended amendments to Policy 24 (and Policy 24A) for the reasons outlined in the section 42A report. However, Mr Brass notes that Clauses 3.12 to 3.15 and Clause 3.17 of the NPS-IB are also relevant and should be referenced in Policy 24 as these clauses modify the effect of Clause 3.10 in certain circumstances. Mr Brass recommends that this issue is addressed by amending Policy 24(a) to add the words *“and clauses 3.12 to 3.15 and 3.17 where relevant”*.

### Forest and Bird

30 The legal submission from Forest and Bird does not support the recommended amendments to Policy 24 to cross-reference relevant NPS effects management hierarchies. It states that:

30.1 This does not meet the statutory obligation for the RPS to give effect to NPS under 62(3) of the RMA.

30.2 Potential changes to any NPS (as signalled by the Government for a range of NPS) are not a relevant matter to be considered by a regional council when preparing and changing a RPS under 61 of the RMA.

30.3 If the relevant NPS is amended or repealed, this will blur the policy intent or otherwise create a large policy gap which may compromise the ability of the RPS to meet key statutory obligations in the RMA (section 5(2)(b), section 6(c), section 30 and 31).

31 Accordingly, Forest and Bird seek further consideration of Options 2 and 3 in the section 42A report<sup>4</sup> but with additional amendments to ensure that infrastructure is not exempt from bottom lines in higher order national direction.

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<sup>4</sup> As set out in paragraph 307 of the section 42A report. Option 2 is a new policy specific to SNAs in the terrestrial environment that replicates the detail in Clause 3.10 and 3.11 of the NPS-IB and Option 3 would also include a new policy that applies in the coastal environment to give effect to Policy 11 of the NZCPS.

## Ngā Hapū

- 32 Ngā Hapū supports the recommended amendments to Policy 24 and Policy 24A on the basis that these clarify and provide certainty on the effects management hierarchy in national direction that must be applied when protecting significant indigenous biodiversity from subdivision, use and development. Ngā Hapū also supports the intent of the provisions to provide rigour and robustness to the use of biodiversity offsetting and compensation in the Wellington Region.

## Rangitāne

- 33 Ms Burns does not support the approach to cross-referencing relevant NPS in Policy 24 and considers that this makes the policy redundant. Ms Burns also raises concerns that the recommended amendments to Policy 24:

- 33.1.1 Add unnecessary duplication.
- 33.1.2 Do not give effect to higher order policies by cross-referencing them.
- 33.1.3 Do not provide further clarity or interpretation at a local scale of how effects on indigenous biodiversity will be managed.
- 33.1.4 Will have no weight if the NPS-IB is replaced or repealed, which will leave a gap in the RPS in terms of meeting obligations under section 6(c) of the RMA.

- 34 On this basis, Ms Burns requests similar relief as Forest and Bird to consider Option 2 or Option 3 in the section 42A report (paragraph 307) further as these are more appropriate and effective to implement the NPS-IB and NZCPS. Ms Burns acknowledges that the approach to give effect to relevant NPS is an ongoing issue throughout Change 1, considers that the approach should be consistent, and that this needs to be further addressed in Hearing Stream 7 (Wrap up and integration).

## Waka Kotahi

- 35 Ms Heppelthwaite supports the recommended amendments to Policy 24 and Policy 24A to separate out the directions to protect areas with significant indigenous biodiversity values in regional and district plans and to provide direction on the use of biodiversity offsetting and compensation, as this makes the purpose of each policy much clearer.

36 Ms Heppelthwaite also indicates support for the approach to cross-reference NPS provisions in Policy 24 on the basis that it avoids detailed replication or reinterpretation within the RPS. Ms Heppelthwaite considers that it is critical to retain clauses (a) to (c) in Policy 24 to:

36.1 Reflect the nuances of the various 'protect' requirements in the NPS-IB, NPS-FM and NZCPS.

36.2 Ensure that 'protect' is not interpreted as an outright preclusion (protection) for significant indigenous biodiversity values.

37 In this regard, Ms Heppelthwaite supports the recommended amendments to Policy 24 in the section 42A report.

#### Wellington City Council

38 Ms Cook supports the intent of the recommended amendments to Policy 24 in the section 42A report, but recommends that clause (c) is amended to remove inconsistent referencing by either:

38.1 Referring to Policies 6 and 7 of the NPS-FM; or

38.2 Deleting the clause as regional and district plans need to give effect to Policies 18A and 18A in the RPS regardless of what Policy 24 says.

#### Wairarapa Federated Farmers

39 Mr Matich considers that the amended timeframe in Policy 24 does not give effect to the NPS-IB and considers that this should be 4 August 2031 (eight years after the NPS-IB commencement date) rather than 4 August 2028.

#### Wellington International Airport Ltd

40 The planning evidence of Ms Hunter on behalf of WIAL notes that she does not have a significant issue with the recommended amendments to Policy 24 and Policy 24A on the basis that they are seeking to align with higher order documents. However, Ms Hunter recommends that the NPS-IB pathway for specified infrastructure<sup>5</sup> is the preferred pathway for managing the effects of this infrastructure in the coastal environment. Ms Hunter considers that it is appropriate to recognise that specified infrastructure is

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<sup>5</sup> Clause 3.11(1) in the NPS-IB.

constrained by its functional, operational or technical requirements and therefore such activities should be able to access the full effects management hierarchy, including the ability to offset or compensate residual adverse effects consistent with section 104(1)(ab) of the RMA. To provide for this relief, Ms Hunter recommends that Policy 24 is amended to add an additional clause (d) as follows “*An effects management hierarchy for Regionally Significant Infrastructure.*”

### Winstone

41 Ms Clarke supports the recommended amendments to Policy 24 to provide for existing pathways for certain activities in national direction, particularly the pathway for aggregate extraction in Clause 3.10 and Clause 3.11 of the NPS-IB. Ms Clarke acknowledges the assessment in the section 42A report that cross-referencing the relevant NPS provisions is the most efficient option to give effect to the NPS-IB, but notes that this is inconsistent with the recommended amendments to Policies 40A and 40B made by Ms Pascall in Hearing Stream 5. Ms Clarke considers that it is more appropriate to adopt a similar drafting approach for the indigenous ecosystem provisions, including a separate ‘consideration’ policy that applies to all decision-makers. Ms Clarke acknowledges that this will require more detailed drafting work to integrate the Indigenous Ecosystem provisions with Policy 18A, 18B, 40A and 40B that were considered in Hearing Stream 5.

### Analysis and recommendations

42 The key issue raised in relation to Policy 24 largely relates to the drafting approach to give effect to higher order documents, which I have discussed above and in some detail in the section 42A report. As outlined above, I consider that it would be beneficial for the Panels to consider the two drafting approaches in relation to Policy 24 (cross-referencing v repeating higher order provisions) given that this is a key provision within the HS6 topic and one of the most complex from a drafting perspective.

43 Accordingly, I have set out an alternative drafting approach for Policy 24 which is provided in full in Appendix 1 of Ms Guest’s evidence. This essentially replaces clauses (a) to (c) with two new policies, two new appendices for biodiversity offsetting and biodiversity compensation, plus some new definitions. The first new policy (Policy 24B) would apply to significant indigenous biodiversity in the terrestrial environment and essentially replicates Clause 3.10 and Clause 3.11 of the NPS-IB, with minor amendments to align with RPS

terminology. I have also recommended additional definitions for 'effects management hierarchy' and 'specified infrastructure' consistent with the NPS-IB.

44 The second recommended policy (Policy 24C) would apply within the coastal environment and essentially replicates Policy 11 of the NZCPS with minor amendments to align with RPS terminology.

45 In response to the suggestion from Mr Brass that Policy 24 needs to reference other NPS-IB clauses, I anticipate that this revised drafting may address this point. I also note that Appendix 3 of the section 42A report provides recommendations on how to give effect to Clauses 3.12 to 3.15 and Clause 3.17 of the NPS-IB, including new clauses plantation forestry activities and established activities in Policy 47.

46 In terms of the recommended reference to Policy 18A and 18B of the RPS in clause (c) of Policy 24, the intent was to ensure the RPS directions relating to areas with significant indigenous biodiversity values are located within one RPS policy. However, I agree with Ms Cook that this reference is not necessary given that those policies will need to be given effect to through regional and district plans regardless of what Policy 24 says. I therefore recommend that this clause is removed and a reference to Policy 18A and Policy 18B is included in the explanation of Policy 24 to ensure there is still a clear link to the effects management hierarchies to be applied in relation to natural inland wetlands and river extent and values.

47 I do not agree with the relief sought by Ms Hunter to add an additional clause in Policy 24 referring to "*An effects management hierarchy for Regionally Significant Infrastructure*". I consider that this clause would create uncertainty in terms of what effects management hierarchy is to be applied to these activities and how this differs from the more specific hierarchies referred to above (i.e. there is a need to be more specific in the exact effects management hierarchy and associated gateway tests that apply for specified infrastructure).

48 In terms of the timeframe to implement Policy 24, I note that the five-year implementation timeframe (August 2028) is aligned with Clause 4.2 of the NPS-IB which sets out a five-year timeframe for giving effect to NPS-IB provisions relating to SNAs. Mr Match appears to be referring to Clause 4.1 of the NPS-IB which sets out an eight-year timeframe for other (non-SNA related) changes to give effect to the NPS-IB.

### Recommended amendments

49 My recommended amendments for Policy 24, new Policy 24B, new Policy 24C, Appendix 1B (biodiversity offsetting and aquatic offsetting), Appendix 1C (biodiversity compensation and aquatic compensation), and new definitions are shown in Appendix 1 of Ms Guest's evidence. I appreciate that this detailed drafting will benefit from further consideration through the HS6 hearings and anticipate some further refinement will be required if this more detailed drafting approach is preferred by the Panels. I also anticipate that this may require some further consideration through Hearing Stream 7 to ensure a consistent approach across Change 1 whether that be through cross-referencing or repeating highly directive NPS provisions as shown in Appendix 1.

### Section 32AA evaluation

50 Consistent with Issue 1 above, I do not consider a section 32AA evaluation is required in relation to the above recommendation as there is no change to the actual substance of the Change 1 provisions, rather this is a recommended change in drafting approach to incorporate the NPS-IB provisions into Policy 24 and new provisions rather than cross-reference these.

### **Policy 24A and Appendix 1A (Issue 10 in the section 42A report)**

51 Policy 24A and Appendix 1A are addressed in the evidence of DGC, Forest and Bird, HCC, Meridian, Rangitāne, Waka Kotahi, WCC, WFF, WIAL and Winstone.

### Director General of Conservation

52 Mr Brass considers that Policy 24A, as recommended in the section 42A report, is appropriate as this:

52.1 Reflects expert evidence and best practice for biodiversity offsetting and compensation.

52.2 Gives effect to the NPS-IB and can be implemented through Change 1.

53 Mr Brass also considers that more restrictive (i.e. preferably achieving a 10% net gain or greater) and specific changes (i.e. Appendix 1A) recommended in the section 42A report to give effect to the NPS-IB are clearly justified as appropriate for the Wellington Region, based on the technical evidence of Dr Maesyk and Dr Crisp. Mr Brass considers that these recommended amendments are appropriate to implement the NPS-IB direction in a



regional context. Mr Brass also supports the changes to Table 17 in Appendix 1A to update the list of ecosystems and species based on the technical evidence from Dr Crisp, along with the recommended structural and drafting changes to Appendix 1A to improve clarity.

### Forest and Bird

- 54 The legal submission from Forest and Bird submits that, while the recommended redrafting of Policy 24A in the section 42A report may be an improvement, the reference to “preferably a 10% net gain or greater” does not overcome the inherent uncertainties and inaccuracies associated with biodiversity offsetting modelling. Forest and Bird reference a recent paper on offsetting to highlight the issues, limitations and risks associated with offsetting<sup>6</sup>. On this basis, Forest and Bird submit that a general reference to “net gain” rather than a quantum of net gain may drive better ecological outcomes.
- 55 Forest and Bird also raise concerns with the application of Policy 24A in the coastal environment, including that:
- 55.1 The NZCPS makes no express reference to offsetting and compensation.
- 55.2 The coastal marine area is not within the scope of the NPS-IB.
- 55.3 The NZCPS prevails over the NPS-IB where there is conflict between the two documents in the terrestrial coastal environment and there is considerable room for conflict between these documents (e.g. NZCPS Policy 11 is more directive than the NPS-IB).
- 56 Forest and Bird submit that it is important that the RPS effects management provisions are clear as to when biodiversity offsetting and compensation are permissible. To achieve this, Forest and Bird requests that the explanation to Policy 24A be amended to make it clear that it does not apply in the coastal marine area and that the NZCPS prevails when there is conflict between any policies in the coastal environment.
- 57 Forest and Bird also have some remaining concerns with the “static nature” of Appendix 1A. Forest and Bird acknowledge that the following wording recommended at the beginning of Appendix 1A “*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)*” addresses this

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<sup>6</sup> Corkery and others “*Poorly designed biodiversity loss-gain models facilitate biodiversity loss in New Zealand*” (2023) Vol 47(1) New Zealand Journal of Ecology, at 5-6.

issue to some extent. However, Forest and Bird remain concerned that the wording in Policy 24A(b) and (c) does not specifically allow additional threatened species and habitats to be considered as limits to biodiversity offsetting and compensation. To address this issue, Forest and Bird recommends the following wording be added to clauses (b) and (c) in Policy 24A *“and any individuals of Threatened or At Risk (Declining) taxa under the New Zealand Threat Classification System”*.

58 Forest and Bird submit that this relief is consistent with recent Court decisions that confirmed that:

58.1 It is lawful for a RPS to include limits on when biodiversity offsetting and compensation are available.

58.2 It is appropriate for those limits to refer to no loss of individuals of Threatened or At Risk (Declining) taxa under the New Zealand Threat Classification System, on the basis these categories correspond with rare or vulnerable indigenous biodiversity.

#### Hutt City Council

59 Mr McDonnell supports the intent of Policy 24A to provide policy direction on the application of biodiversity offsetting and compensation. However, Mr McDonnell is of the view that Policy 24A is overly lengthy and repetitive and recommends amendments to clause (a) to address this concern, including removing any cross-referencing to the NPS-IB and NPS-FM principles for offsetting and compensation.

#### Rangitāne

60 Ms Burns supports the addition of Policy 24A and the recommended amendments to provide greater clarity and direction on the use of biodiversity offsetting and compensation principles in regional and district plans.

#### Meridian

61 Ms Foster recognises that the recommended amendments to soften the wording to *“at least net gain and preferably 10% net gain or greater”* outcome in Policy 24A does go some way to addressing Meridians concerns. However, Ms Foster remains opposed to Appendix 1A as it applies to renewable electricity generation (REG) activities and electricity transmission (ET) activities. Ms Foster notes that the effects management

hierarchies set out in the NPS-IB, NPS-FM and the proposed National Policy Statement for Renewable Electricity Generation (proposed NPS-REG) and proposed National Policy Statement for Electricity Transmission (NPS-ET) do not include the additional limits to offsetting and compensation specified in Appendix 1A. Ms Foster is of the view that there is no basis in the NPS-IB for applying these additional limits to REG activities or ET activities and that Clause 1.3(3) of the NPS-IB supports REG and ET activities being excluded from Appendix 1A.

62 Ms Foster also notes that Clause 3.6 in the proposed NPS-REG includes direction to “*have regard to*” the principles for biodiversity offsetting and compensation in Appendices 3 and 4 of the NPS-IB. While Meridian is content with the requirement to “*have regard to*” these principles under the draft NPS-REG, Ms Foster reiterates the point that the NPS-IB principles do not include the additional limits specified in Appendix 1A. Therefore, Ms Foster is concerned that Appendix 1A could impose more stringent limits on REG activities *‘in a manner not intended by the NPS-IB or the consultation draft of the NPS-REG 2023’*<sup>7</sup>. Therefore, as discussed below, Meridian is seeking an exemption to Policies 24 and 24A (and new Policy 24B) and if these amendments are accepted, then Meridian is not opposed to Appendix 1A.

#### Waka Kotahi

63 Ms Heppelthwaite accepts the rationale to identify parameters or sites as significant through Table 17 in Appendix 1A. However, Ms Heppelthwaite is concerned that the specificity proposed in Table 17 sets up a rigid approach which does not allow applicants and decision-makers to adapt to circumstances where technical information, methods or approaches to biodiversity offsetting have advanced. This concern relates to the column in Table 17 titled “*Policy 24A(b) – No appropriate site, knowledge, methods, expertise, mechanism*” which identifies where offsetting cannot be applied to residual adverse effects where there are no technically feasible methods. Ms Heppelthwaite is concerned that this leaves no/little room to accommodate technical advances and may discourage advances in technology by simply not allowing them to be assessed or adopted. Conversely, Ms Heppelthwaite considers that the corresponding principles in Appendix 3 and 4 of the NPS-IB allow for an assessment and judgement to be made on a particular offset or compensation based on specific circumstances at the time. On this basis, Ms

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<sup>7</sup> Evidence of Ms Christine Foster, paragraph 8.12.

Heppelthwaite recommends that the column titled “*Policy 24A(b) No appropriate site, knowledge, methods, expertise, mechanism*” in Table 17 of Appendix 1A be deleted.

#### Wellington City Council

- 64 While Ms Cook supports the regional specificity set out in Policy 24A(a)(ii) and Appendix 1A, she considers that it is more appropriate and efficient to implement this regional specificity through guidance rather than RPS policy direction. Ms Cook considers that this will help prevent the policy and methods becoming lengthy and confusing while allowing for the guidelines to be updated more regularly than a typical RMA plan process.
- 65 Ms Cook also raises concerns that the “*at least net gain and preferably a 10% net gain or greater*” target will create additional uncertainty for applicants and consent authorities as there will be no set standards to measure the biodiversity outcomes/gains from offsetting and compensation. Ms Cook is also of the opinion that an arbitrary 10% net gain target will not achieve a better outcome than net gain target as it will still be difficult to quantify. Accordingly, Ms Cook recommends that Policy 24A(d) is deleted.
- 66 Ms Cook also recommends:
- 66.1 Clause (c) in Policy 24A is deleted on the basis that this repeats Appendices 3 and 4 of the NPS-IB, which are already referenced in clause (a).
- 66.2 Greater Wellington develop a “Wellington Specific Biodiversity Metric Tool” to aid in the assessment of the biodiversity offsetting and compensation principles set out in the NPS-IB.
- 66.3 Consequential amendments to Appendix 1A to provide for the above relief.
- 67 Lastly, Ms Cook is concerned that the reference to aquatic biodiversity and aquatic compensation within Policy 24A adds complexity and does not cover the full range of aquatic values. Ms Cook is of the opinion that this direction is best addressed as separate policy so that Policy 24A focuses on indigenous biodiversity in the terrestrial environment consistent with the NPS-IB.

#### Wairarapa Federated Farmers

- 68 Mr Matich raises a potential drafting error with the reference to “*naturally uncommon species*” in clause (c) of Policy 24A, noting that this term is not used in the NPS-IB or RPS (whereas “*naturally uncommon ecosystems*” is defined). Mr Matich also raises concerns

that the term “*naturally uncommon ecosystems*” could be interpreted as including a wide-ranging array of “*ephemeral wetland*” features, including damp or boggy pastureland, which would be problematic and confusing when implementing Policy 24A. Mr Matich recommends that ephemeral wetlands are either suitably defined to reflect the ‘rarity and distinctiveness’ criterion in Appendix 1 of the NPS-IB, or alternatively be excluded from the direction in Policy 24A relating to “*naturally uncommon ecosystems*”.

69 Mr Matich also raises several concerns with the reference to a “preferably 10% net gain or greater” target in clause (d) of Policy 24A on the basis that this is inconsistent with Clause 3.22 of the NPS-IB (increasing indigenous vegetation cover), which requires regional councils to set targets for increasing indigenous vegetation cover by at least 10% in urban and non-urban environments. Mr Matich notes that the Wellington Region already has around 35% indigenous vegetation land cover, therefore there is no justification for the requirement in Policy 24A to achieve a 10% or greater net gain in indigenous biodiversity through biodiversity offsetting.

70 Mr Matich also raises concerns that the preferably 10% net gain target in Policy 24A:

70.1 Is not supported by sufficient evidence and is arbitrary.

70.2 May result in significant costs for applicants without any environmental benefit.

70.3 Will increase reliance on technical experts for the calculations with associated costs for applicants.

70.4 May result in inequalities for resource users.

71 For these reasons, Mr Matich considers that the “preferably 10% net gain or greater” target is unworkable and recommends that this is deleted from Policy 24A and Policy 47.

#### Wellington International Airport Limited

72 Ms Hunter makes extensive commentary on the potential implications of Policy 24A and Appendix 1A on activities and development in the coastal environment. In summary, Ms Hunter is concerned that these provisions could impose significant restrictions on development in Wellington’s coastal environment, and in turn result in significant and likely unforeseen costs. Given the direction in section 104(1)(ab) of the RMA and more recent national direction (i.e. NPS-IB and NPS-FM) regarding the application of the effects management hierarchy where conflicts with biodiversity values arise, Ms Hunter is of the

view that the RPS enable all specified or regionally significant infrastructure to access the effects management hierarchy and that this should apply across all environments – coastal, terrestrial and freshwater.

73 The more specific comments and concerns raised by Ms Hunter include:

73.1 Policy 24A is generally appropriate to the extent it seeks to align with the NPS-IB and NPS-FM. However, the drafting of Policy 24A may unintentionally prevent any consideration of offsetting or compensation where this affects significant biodiversity values in the coastal environment. Ms Hunter accepts that this is not strictly provided for in the NZCPS but notes that there is a general obligation in section 104(1)(ab) of the RMA for consent authorities to consider any positive effects arising from offsetting or compensation measures from allowing a proposed activity.

73.2 It is well established that infrastructure activities, particularly those which are regionally significant, often have technical, functional or operational requirements and constraints that mean they may have to co-locate in areas that have significant biodiversity values.

73.3 The functional and operational needs of infrastructure are recognised in the provisions of the NZCPS, but this tension does not appear to be addressed in section 42A report. It is appropriate for the RPS to give further direction on how to resolve this tension with Policy 11 of the NZCPS.

73.4 A strict avoidance requirement (as set out in Policy 11(a) of the NZCPS) may no longer be appropriate in light of the *Port Otago* Supreme Court decision and that a more balanced approach should be adopted in the RPS.

74 In terms of Appendix 1A, Ms Hunter also raises concerns that:

74.1 Appendix 1A prevents offsetting and compensation from being considered for species and habitats listed in Policy 11(a) of the NZCPS and potentially the species and habitats listed in Policy 11(b) of the NZCPS.

74.2 It is unclear if all the habitats and species referred to in Table 17 cover all those habitats and species listed in Policy 11(a) of the NZCPS in the Wellington Region.

74.3 Table 17 appears to cover a wide range of areas within the coastal environment of the Wellington Region (e.g. all estuaries and all mixed kelp assemblages) and the potential costs of these restrictions have not been adequately justified.

75 On the basis of these concerns and the uncertainty as to how Policy 24A, Appendix 1A and Table 17 will apply in the coastal environment, Ms Hunter requests that these provisions are deleted from the RPS.

#### Winstone

76 Ms Clarke is concerned that, despite some amendments to Policy 24A, this direction will continue to significantly restrict the ability to undertake biodiversity offsetting or compensation in the Wellington Region. Ms Clarke considers that there is no evidence to support this approach, other than the NPS-IB being gazetted and there is no evidence to support a more restrictive approach than the NPS-IB in the Wellington Region. Ms Clarke considers that the NPS-IB already provides clear direction on where offsetting or compensation is inappropriate that enables consideration of the local context, the particular offset or compensation proposal and its effects. Ms Clarke is concerned that:

76.1 Policy 24A will restrict opportunities for innovation and seeking the best outcomes for indigenous biodiversity.

76.2 Identifying specific species and habitats in Appendix 1A fails to account for further research and the evolving understanding of the conservation status of species over the duration of the RPS.

77 On this basis, Ms Clarke considers that Policy 24A and Appendix 1A should be deleted in from the RPS.

#### Analysis and recommendations

78 In my opinion, the main issues to respond to in submitter evidence in relation to Policy 24A and Appendix 1A are:

78.1 Concerns that the list of ecosystems and species in Appendix 1A is extensive and may significantly restrict the use of offsetting and compensation in the Wellington Region.

- 78.2 The “static nature” of the list of ecosystems and species in Appendix 1A v providing flexibility for changes in the conservation status of species and the feasibility of technical methods to secure net gains from offsetting.
- 78.3 The application of the provisions in the coastal environment and allowing for an effects management hierarchy to be applied to regionally significant infrastructure (with offsetting and compensation) in the coastal environment.
- 78.4 The direction to achieve a “preferably 10% net gain or greater” in clause (d) of Policy 24A.
- 78.5 Whether regional specificity on offsetting and compensation should be provided as policy direction v guidance (as requested by WCC).

*Extensive nature of Appendix 1A and restrictions on consideration of offsetting*

79 I acknowledge the concerns of submitters that the list of species and ecosystems in Appendix 1A appears to be extensive. However, as detailed in the section 42A report (paragraph 317 to 326), I rely on the technical evidence of Dr Crisp in this respect who originally developed and then updated list of species and ecosystems in Appendix 1A. Ms Crisp explains the methodology to develop the list of species and ecosystems, including collating the most up-to-date information on naturally uncommon ecosystems and threatened species and ecosystems in the Wellington Region. The technical evidence of Dr Crisp (paragraph 19 to 24) also explains how the list of species and ecosystems in Appendix 1A aligns with the NPS-IB principles<sup>8</sup> that biodiversity offsetting and compensation may be inappropriate when:

- 79.1 The indigenous biodiversity affected is *irreplaceable* or *vulnerable*.
- 79.2 There are no technically feasible options to secure gains within acceptable timeframes.

80 On this basis, I am still of the view that the list of species and ecosystems in Appendix 1A is an appropriate and effective way to give effect to these principles in the NPS-IB by

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<sup>8</sup> I also note that principle relating to limits to offsetting predates the NPS-IB and is principle 2 in the Business and Biodiversity Offsets Programme (BBOP) “. **Limits to what can be offset:** *There are situations where residual impacts cannot be fully compensated for by a biodiversity offset because of the irreplaceability or vulnerability of the biodiversity affected*”.



providing a regional interpretation of where biodiversity offsetting and compensation may be inappropriate in the Wellington Region.

- 81 It is also important to note that Policy 24A and Appendix 1A do not rule out the use of offsetting when one of the listed ecosystems or species is affected, as indicated by submitters. Rather, as outlined in paragraph 323 of the section 42A report, the intent is to make it clear that biodiversity offsetting affecting one of the listed ecosystems and species is inappropriate unless a net gain can be achieved and to ensure that this assessed in a robust manner.

*Static nature of Appendix 1A v allowing for flexibility*

- 82 I agree with submitters that it is important to recognise the changing nature of the conservation status of species and ecosystems and to allow for advances in knowledge, technology and methods to secure net gains through offsetting. I note that the amendments to the introductory text of Appendix 1A<sup>9</sup> are intended to ensure that the conservation status of other ecosystem and species not listed in Appendix 1A can be considered as appropriate when assessing a particular offsetting or compensation proposal. Further, the words “must be considered as a minimum” in Policy 24(b) are intended to make it clear that Appendix 1A is not an exhaustive list of threatened or natural uncommon ecosystems and species. As such, I do not consider that the amendments requested by Forest and Bird are necessary.

- 83 However, I acknowledge that there is some inconsistencies in the wording between clause (b) and (c) in Policy 24A which may create some confusion in policy intent. I also accept that the apparent reference to naturally uncommon species in clause (c) is confusing and should be addressed. I therefore recommend that the last part of clause (c) in Policy 24A is amended as follows:

....recognise that it is inappropriate to use biodiversity compensation or aquatic compensation where residual adverse effects affect an ecosystem or species that is listed in Appendix 1A as a threatened or naturally uncommon ecosystem or threatened species, including those listed in Appendix 1A as a minimum; and

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<sup>9</sup> Specifically, the insertion of the following before Table 17 “*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).*”

84 I also accept the concern raised by Waka Kotahi that there is a need to allow for advances in technical methods that may make offsetting technically feasible where it currently isn't and that the column in Appendix 1A titled "*Policy 24A(b) (a)(i) No appropriate site, knowledge, methods, expertise, mechanism*" may not provide for. I also note that the redrafting of Policy 24A in the section 42A report unintentionally resulted in a drafting gap in that it no longer makes any reference to this list of species and ecosystems in Appendix 1A<sup>10</sup>. I therefore recommend that this issue and drafting omission is addressed through a new clause (d) in Policy 24A as follows:

["In evaluating whether biodiversity offsetting or aquatic offsetting is inappropriate because there are no technically feasible methods to secure gains in acceptable timeframes recognise that this is unlikely to be appropriate for those species and ecosystems listed in column Policy 24A\(d\) in Appendix 1A"](#).

#### *Application of Policy 24A and Appendix 1A in the coastal environment*

85 In relation to the application of Policy 24A and Appendix 1A in the coastal environment, I agree with Forest and Bird and Ms Hunter that Policy 11 of the NZCPS does not provide the clear pathways and effects management hierarchies for infrastructure that have been included in more recent national direction (i.e. NPS-IB and NPS-FM). I also agree that:

85.1 Policy 11 of the NZCPS does not clearly provide for the use of offsetting and compensation to address residual adverse effects as anticipated by section 104(1)(ab) of the RMA.

85.2 Certain types of infrastructure need to be located in the coastal environment due to their operational, technical and functional requirements as recognised in Policy 6 of the NZCPS and it is appropriate for RMA planning documents to recognise this.

86 I therefore appreciate the request from Ms Hunter for regionally significant infrastructure to have access to an appropriate effects management hierarchy across all environments. However, in relation to the coastal environment, the RPS must give effect to the clear direction in:

86.1 Policy 11 of the NZCPS to avoid certain adverse effects.

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<sup>10</sup> Policy 24(a)(i) in the notified amendments to the policy in Change 1.

- 86.2 Clause 1.4(2) of the NPS-IB that the NZCPS prevails where there is conflict between the two documents in the terrestrial coastal environment.
- 87 My understanding of case law in relation to the “NZCPS avoidance policies” (i.e. Policy 11, 13 and 15) is that “avoid” means “prevent the occurrence of”. As such, Policy 11(a) of the NZCPS provides strong direction that activities which would result in the adverse effects referred are not to be allowed. I also understand from *King Salmon* that minor or transient effects may be acceptable when the “avoid adverse effects” in Policy 11(a) of the NZCPS is used, so this does not equate to a blanket prohibition on activities.
- 88 Further, my understanding is that the use of offsetting as part of an effects management hierarchy does not clearly comply with the direction to avoid adverse effects in Policy 11(a) of the NZCPS. This is because biodiversity offsetting, by its very nature, is a form of positive effect to address a residual adverse effect that cannot be avoided. This is reflected in both the wording of section 104(1)(ab) of the RMA and the definitions of “effects management hierarchy”, “biodiversity offsetting” and “biodiversity compensation” in the NPS-IB and NPS-FM (and now recommended for inclusion in the RPS). When read together, I agree with Forest and Bird that this creates the potential for conflict in the terrestrial coastal environment between the pathways for specified infrastructure in Clause 3.11(1) of the NPS-IB and Policy 11 of the NZCPS that cannot be resolved and is subject to Clause 1.4(2) of NPS-IB.
- 89 Therefore, in my opinion, there is no clear statutory basis to accept the relief sought by Ms Hunter to allow the pathway and effects management framework for specified infrastructure in Clause 3.11(1) of the NPS-IB to apply:
- 89.1 In the terrestrial coastal environment where this would result in any of the adverse effects listed in Policy 11(a) of the NZCPS (given Clause 1.4(2) of NPS-IB and commentary above).
- 89.2 In the coastal marine area, as the NPS-IB does not apply, except in relation to regional biodiversity strategies (Clause 1.3(1) and 1.3(2)(d) of the NPS-IB).
- 90 On this basis, I recommend that the column in Appendix 1A that lists species and ecosystems that meet the criteria in Policy 11(a) of the NZCPS is retained, along with the statement that consideration of biodiversity offsetting and compensation for these ecosystems and species is not provided for. I also recommend:

90.1 The explanation to Policy 24A is amended to include a similar statement that biodiversity offsetting and biodiversity compensation is not provided for where this would affect the species and ecosystems listed in Appendix 1A, Table 17, column NZCPS Policy 11(a.).

90.2 The explanation to Policy 24C is amended to include a statement that it prevails over Policy 24B in the coastal environment above mean high water springs when there is conflict between the two policies that cannot be reconciled.

91 Further, in relation to some of the questions and concerns raised by Ms Hunter, my understanding from Council is that:

91.1 The criteria in Policy 23 provide for/address/incorporate all of the criteria in NZCPS Policy 11(a) and 11(b).

91.2 Schedules F4 and F5 in the Natural Resources Plan includes all sites and habitats known to meet the criteria in NZCPS Policy 11(a) and 11(b), while noting that there are large parts of the coastal environment that have not been subject to ecological surveys, so this is an ongoing exercise.

*Achieving at least net gain and preferable 10% of greater net gains*

92 Dr Maseyk has provided technical rebuttal evidence to respond to a number of concerns raised in submitter evidence in relation to the direction in clause (d) of Policy 24A to achieve at least net gain and preferably a 10% or greater net gain. Key points from this evidence include:

92.1 Offsetting necessitates a numerical framework for accounting for biodiversity across type, amount, and time regardless of whether the objective is no net loss, a non-specified net gain, or quantified net gain target. Therefore, the net gain target itself does not drive the need for calculations and the use of technical experts.

92.2 The complexity of biodiversity offsetting calculations are determined by the complexity and value of the indigenous biodiversity rather than the quantum of the net gain target. Therefore, the costs associated with loss/gain calculations can be expected to be the same regardless of the objective (i.e. no net loss, net gain, or 10% net gain), as the rigour required to describe and calculate losses

and gains is the same. However, achieving an actual increase in net gain might involve additional costs for applicants.

92.3 Biodiversity offset models need to be ecological robust, transparent, repeatable, account for time-lag and use appropriate data inputs. Uncertainties and model limitations need to be clearly communicated and accounted for in offset design. These technical requirements apply, regardless of the objective for the offset (no net loss, unspecified net gain, or a specified net gain target).

93 On this basis, I consider that the concerns raised by submitters that the preferably 10% net gain or greater target will increase complexity of the calculations and reliance on technical experts are overstated and inaccurate. It is also important to reiterate my recommendations in the section 42A report to soften the direction in clause (d) of Policy 24A from a strict 10% net gain requirement to achieving “*at least a net gain and preferably a 10% net gain or greater*” target. This provides considerably more flexibility in the actual quantum of gain achieved by any particular offset proposal and Dr Maseyk is of the opinion that this wording does not carry greater risk of driving poor biodiversity outcomes than a general ‘net gain’ target. On this basis, I recommend that the direction in Policy 24A for offsetting to achieve “at least a net gain and preferably a 10% net gain or greater” outcome of indigenous biodiversity is retained.

94 In relation to the evidence of Mr Matich that a 10% net gain target is unjustified in the context of Clause 3.22 of the NPS-IB and because the Wellington Region already has around 35% indigenous vegetation cover, I note that the purpose of these two targets is different. The indigenous vegetation cover targets required to be set under Clause 3.22 of the NPS-IB are broader targets to be set for urban and non-urban environments and these must be at least 10%. As outlined in Appendix 3 of the section 42A report, Greater Wellington intends to give effect to Clause 3.22 of the NPS-IB through a future RPS change as this requires further technical work and collaboration with territorial authorities and tangata whenua (and most likely with other stakeholders).

95 The 10% net gain target in Policy 24A has a very different focus – it relates to offsetting proposals for a particular activity. The quantum of net gains is intended to recognise the inherent risks associated with offsetting that warrant a more precautionary approach through a higher net gain target (e.g. in case expected gains are overestimated or not achieved in practice). The evidence of Dr Maseyk explains the risks associated with biodiversity offsetting in more detail.

### *Policy direction v non-regulatory guidance on offsetting and compensation*

96 In terms of the request from WCC for Policy 24A to be non-regulatory and develop a ‘Wellington Specific Biodiversity Metric Tool’, this is also addressed in the technical evidence of Dr Maseyk. Dr Maseyk notes that there is currently no standard metric for the purposes of biodiversity offsetting in use in New Zealand, but there are some commonly used models. Dr Maseyk considers that there may be some value in developing a Wellington-specific metric to help consider and implement biodiversity offsetting in the region. However, in her opinion, effective implementation of Policy 24A is not hindered by a lack of Wellington-specific metrics or tools at this point of time as there are biodiversity offsetting models and tools that can be used, and these will continue to be developed and improved to support decision-making. Dr Maseyk also emphasises that these models and tools are there to **support** policy frameworks for offsetting like Policy 24A – but cannot replace them. In my view, this reinforces the importance of including policy direction in the RPS on the use of offsetting and compensation while giving further consideration to non-regulatory methods and tools to support the implementation of this policy direction<sup>11</sup>. Accordingly, I recommend that Policy 24A is retained as a regulatory policy as recommended in the section 42A report.

### *Other issues*

97 Additionally, I note that there have been some unintentional drafting errors when updating the formatting and list of ecosystems and species Appendix 1A due to administration reasons. I consider that these errors can be addressed under Clause 16 of Schedule 1 and those amendments are shown in Appendix 1 of Ms Guest’s evidence.

### Recommended amendments

98 My recommended amendments to Policy 24A are outlined below.

#### **Policy 24A: Principles for biodiversity offsetting and biodiversity compensation**

- (a) Where district and regional plans provide for biodiversity offsetting or aquatic offsetting or biodiversity compensation or aquatic compensation as part of an effects management hierarchy for indigenous biodiversity and/or for aquatic values and extent, they shall include policies and methods to:
  - (i) ensure this meets the requirements of the full suite of principles for biodiversity offsetting and/or biodiversity compensation set out in Appendix 1C Appendix 3 and

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<sup>11</sup> I note that Change 1 already includes Method IE.2 to develop an inventory of biodiversity offsetting and compensation opportunities.

4 of the National Policy Statement for Indigenous Biodiversity 2023 or for aquatic offsetting and/or aquatic compensation set out in Appendix 1D6 and 7 of the National Policy Statement for Freshwater Management 2020;

- (ii) provide further direction on where biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation are ~~not~~ inappropriate, in accordance with clauses (b) to (d) and ~~(e)~~ below;
- (iii) provide further direction on required outcomes from biodiversity offsetting, aquatic offsetting, biodiversity compensation, and aquatic compensation, in accordance with clauses ~~(de)~~ and (ef) below; and
- (b) In evaluating whether biodiversity offsetting or aquatic offsetting is inappropriate because of irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, the feasibility to offset residual adverse effects on any threatened or naturally uncommon ecosystem or threatened species must be considered, including those listed in Appendix 1A ~~must be considered~~ as a minimum; and
- (c) In evaluating whether biodiversity compensation or aquatic compensation is inappropriate because of the irreplaceability or vulnerability of the indigenous biodiversity, extent, or values affected, recognise that it is inappropriate to use biodiversity compensation or aquatic compensation where residual adverse effects affect ~~an ecosystem or species that is listed in Appendix 1A as a~~ threatened or naturally uncommon ecosystem or threatened species, including those listed in Appendix 1A as a minimum; and
- (d) In evaluating whether biodiversity offsetting or aquatic offsetting is inappropriate because there are no technically feasible methods to secure gains in acceptable timeframes, recognise that this is unlikely to be appropriate for those species and ecosystems listed in column Policy 24A(d) in Appendix 1A; and
- (e) District and regional plans shall include policies and methods that require biodiversity offsetting or aquatic offsetting to achieve at least a net gain, and preferably a 10% net gain or greater, in indigenous biodiversity outcomes to address residual adverse effects on indigenous biodiversity, extent, or values. This requires demonstrating, and then achieving, net gains in the type, amount, and condition of the indigenous biodiversity, extent, or values impacted. Calculating net gain requires a like-for-like quantitative loss/ gain calculation of the indigenous biodiversity values (type, amount, and condition) affected by the proposed activity; and
- (f) District and regional plans shall include policies and method to require biodiversity compensation or aquatic compensation to achieve positive effects in indigenous biodiversity, extent, or values that outweigh residual adverse effects on affected indigenous biodiversity, extent, or values.

#### Section 32AA evaluation

- 99 I consider that my recommended amendments to Policy 24A are appropriate to achieve the relevant RPS objectives as these seek to improve clarity and avoid potential interpretation issues without changing the underlying intent. The amendments will also ensure that the current conservation status of ecosystems and species is considered when assessing a particular offsetting proposal and allow for advances in technical methods to

secure gains from offsetting. This may help improve outcomes for indigenous biodiversity and improve certainty with associated efficiency gains.

## **Renewable electricity generation (REG) and electricity transmission (ET) - Issue 10 in the section 42A report**

100 This issue is addressed in the evidence of Forest and Bird, Meridian and Transpower.

### Forest and Bird

101 The legal submission from Forest and Bird opposes any sector-based carve-outs, including for REG activities and ET activities. Forest and Bird note that the “carve-out” in Clause 1.3(3) of the NPS-IB is unusual in that it “ousts” the role of section 6(c) of the RMA when there is not statutory basis to do so, and it could also have the perverse effect of overriding other Part 2 matters. Forest and Bird therefore seek to ensure that any gaps left by Clause 1.3(3) of the NPS-IB are filled by the RPS to ensure REG activities and ET activities are still subject to the relevant effects management hierarchy.

102 Forest and Bird acknowledge that the proposed NPS-REG and proposed NPS-ET<sup>12</sup> are intended to address the gap created by Clause 1.3(3) but consider that the RPS needs to fill this gap in the meantime to meet statutory obligations under section 6(c) of the RMA (which the NPS-IB cannot override).

103 Forest and Bird further submit that the caveat in *King Salmon*<sup>13</sup> to revert to Part 2 of the RMA when there is “*absent invalidity, incomplete coverage or uncertainty of meaning*” in the relevant higher order documents applies in this circumstance as the NPS-IB is clearly incomplete in its coverage with respect to REG activities and ET activities.

### Meridian

104 Ms Foster acknowledges that recommended amendments in the section 42A report to split out the direction for biodiversity offsetting and biodiversity compensation in Policy 24A and soften the “preferable a 10% net gain or greater” outcome partially addresses Meridian’s concerns with Policy 24 and Appendix 1A. However, Ms Foster considers that there is still a wider unresolved issue of whether Policies 24 and 24A should apply to REG

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<sup>12</sup> I provide an overview of the existing and proposed NPS-REG and NPS-ET in paragraph 31-36 of the section 42A report for Hearing Stream 3 – Climate Change: Energy, Waste and Industry.

<sup>13</sup> *Environmental Defence Society Inc v The New Zealand King Salmon Co Ltd* [2014] NZSC 38.



activities and ET activities at all given that these activities are specifically exempt from the NPS-IB under Clause 1.3(3).

105 Ms Foster agrees with my statement in the section 42A report that the exemptions in Clause 1.3(3) of NPS-IB for REG and ET activities are anticipated to work together with the proposed NPS-REG and proposed NPS-ET that the Government was consulting on just before the NPS-IB was gazetted. Reading all three NPS's together, Ms Foster considers that the overarching intention is that SNAs affected by REG activities and ET activities are to be managed differently from the more stringent approach that the NPS-IB takes for other activities (including other "specified infrastructure"). In her opinion, this is reflected in the more enabling effects management hierarchy in Clause 3.6 of the proposed NPS-REG.

106 Ms Foster considers that the key issue relates to the timing of when the proposed NPS-REG and proposed NPS-ET will come into effect relative to the hearings and decisions on Change 1. Ms Foster considers that it is not appropriate to defer any amendments to Policy 24 in relation to REG activities and ET activities until such time as the more enabling provisions of the proposed NPS-REG and proposed NPS-ET come into effect. Instead, Ms Foster considers that a more enabling approach for REG activities and ET activities should be included in the RPS now as:

106.1 It is already clear how the NPS-IB, the proposed NPS-REG and proposed NPS-ET are intended to work together and that Change 1 should accurately reflect this policy intent, despite the wording and timing of the final NPS-REG and NPS-ET amendments being uncertain at this time.

106.2 Failing to provide a more enabling pathway for REG activities and ET activities means there will be an inconsistent (and more restrictive) approach in Change 1 for REG and ET activities compared to other specified infrastructure, based on the wording of Clause 3.11(1) of the NPS-IB (which is referred to in Policy 24).

107 Based on these issues and concerns, Ms Foster recommends that Policies 24 and 24A are amended to exempt REG activities and that a new Policy 24B is created that provides a specific effects management hierarchy for REG activities that affect indigenous ecosystems and habitats with significant indigenous biodiversity values. Ms Foster states that this will *provide clear policy guidance, particularly for REG, for the foreseeable future*

*until there is certainty about the NPS-REG<sup>14</sup>, plus 'reflect the intention that REG activities should be subject to a separate REG-specific effects management hierarchy<sup>15</sup>.'*

### Transpower

- 108 The planning evidence of Ms Whitney on behalf of Transpower raises similar concerns as Ms Foster with respect to how Policies 24 and 24A apply to ET activities. Ms Whitney considers that the RPS is required to give effect to NPS-IB as gazetted, and this includes giving effect to the direction within Clause 1.3(3) of the NPS-IB that it does not apply to REG activities and ET activities and that these activities are not “specified infrastructure” under the NPS-IB.
- 109 As with Ms Foster, Ms Whitney is concerned that Policy 24 does not acknowledge the carve-out in Clause 1.3(3) of the NPS-IB, as she considers this will imply that the RPS policies that give effect to the NPS-IB also apply to ET assets and activities. Ms Whitney considers that this will result in an inconsistent and more stringent approach for REG activities and ET activities compared to other specified infrastructure through Policy 24, based on the wording of Clause 3.11(1) of the NPS-IB, which is not the clear policy intent from the Government.
- 110 Ms Whitney requests an exemption for ET activities to Policies 24 and 24A consistent with that requested by Ms Foster. However, Ms Whitney is not seeking a new effects management policy for managing ET activities affecting areas with significant indigenous biodiversity values. Ms Whitney considers that any specific policy relating to the effects of ET activities on significant indigenous biodiversity values should be formulated once the proposed NPS-ET has been finalised and gazetted, as opposed to pre-empting the final NPS-ET provisions through Change 1.

### Analysis and recommendations

- 111 From 2021-2023 I was engaged by the Ministry of Business, Innovation and Employment to provide planning support to help develop the proposed NPS-REG and proposed NPS-ET. This included involvement drafting of the proposed NPS-REG and proposed NPS-ET, the public consultation phase from April-May 2023, analysis of submissions, and advice on interactions with other national direction, including the “carve out” for REG and ET activities in Clause 1.3(3) of the NPS-IB. I therefore consider that I have a good

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<sup>14</sup> Evidence of Ms Christine Foster, paragraph 8.11.

<sup>15</sup> Ibid, paragraph 8.9.

understanding of the intent of these amendments and the issues raised in the evidence of Forest and Bird, Meridian and Transpower.

112 At a broad level, I agree with Forest and Bird that Clause 1.3(3) of the NPS-IB has created a policy gap with respect to REG activities and ET activities and areas with significant indigenous biodiversity values and that the RPS needs to address that gap to meet obligations under section 6(c) of the RMA. I also agree with Ms Foster that the clear intent of Government through Clause 1.3(3) of the NPS-IB and the proposed NPS-REG and proposed NPS-ET is to provide a more enabling pathway for REG activities and ET activities. This is in recognition of the importance of significantly increasing renewable electricity generation capacity to address climate change and meet New Zealand's emission reduction targets. As I outlined in the section 42A report, the intent is that these more enabling policy pathways for REG activities and ET activities in the proposed NPS-REG and proposed NPS-ET are to be directly inserted into RPS and plans without a Schedule 1 process under section 55(2) and (2A) of the RMA. This would then override any RPS policy direction on how to manage the effects of these activities on significant indigenous biodiversity values.

113 I therefore agree with Ms Foster that the key issue is timing, given these amendments have not yet come into force, and there is some uncertainty as to when this will occur and what the final wording of amended NPS provisions. However, I also note that the Government has clearly signalled that amendments to the NPS-REG are to be progressed as a priority in its 100-day plan<sup>16</sup> and has indicated a clear intent to provide a more enabling framework for REG activities to double New Zealand's renewable electricity generation output.

114 Based on this policy context and uncertainties about the timing and wording of the replacement NPS-REG and NPS-ET, I agree with Ms Foster that the most effective and efficient approach to address the policy gap created by Clause 1.3(3) of the NPS-IB is to provide a new specific policy for REG and ET activities (Policy 24D) that is aligned with Clause 3.6 of the proposed NPS-REG and Clause 3.8 of the proposed NPS-ET<sup>17</sup> with appropriate minor modifications to align with RPS terminology. I also recommend

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<sup>16</sup> Item 4 on the Government's 100-day plan released on 29 November 2023 is "*Begin efforts to double renewable energy production, including drawing up a national policy statement on renewable electricity generation*".

<sup>17</sup> These two clauses provide consistent gateway tests and effects management hierarchies for REG activities and ET activities in relation to "areas with significant environmental values". This is defined as including SNAs, i.e. areas with significant indigenous biodiversity values.

supporting definitions for REG activities and ET activities based on the proposed NPS-REG and proposed NPS-ET.

115 My recommended amendments for this new 'Policy 24D' are outlined below. As discussed above, I anticipate that this is likely to be an interim policy framework until the NPS-REG and NPS-ET amendments come into force. These amendments are likely to include policies that are directly inserted into the RPS (without a Schedule 1 process), which will supersede this new recommended Policy 24E. However, in my opinion, it is important to address this gap through the RPS now given the uncertainties about when those amendments will come into force.

116 I do not agree with the request from Transpower for a blanket exemption to Policy 24 and Policy 24A for ET activities. This is inappropriate in my opinion as it would not meet obligations under section 6(c) of the RMA. I appreciate that Transpower is seeking a more bespoke policy framework for ET activities through the proposed NPS-ET. However, I consider that Clause 3.8 of the NPS-ET provides an appropriate interim policy framework to manage the effects of these activities on significant indigenous biodiversity values until the NPS-ET amendments come into force.

#### Recommended amendments

117 I recommend new Policy 24D in Change 1 as follows:

**Policy 24D: Managing the effects of REG activities and ET activities on indigenous ecosystems and habitats with significant indigenous biodiversity values – district and regional plans**

As soon as reasonably practicable, and by no later than 4 August 2028, district and regional plans shall include policies, rules and methods to manage the effects of REG activities and ET activities on indigenous ecosystems and habitats with significant indigenous biodiversity values to:

- 1) Allow REG activities or ET activities to locate in areas with significant indigenous biodiversity values if:
  - (a) there is an operational need or functional need for the REG activities or ET activities to be located in that area; and
  - (b) the REG activities or ET activities are nationally or regionally significant; and
  - (c) clause (2) is applied to manage adverse effects.
- 2) Manage adverse effects by applying the following hierarchy:
  - (a) adverse effects are avoided where practicable; then

- (b) where adverse effects cannot be avoided, they are minimised where practicable; then
  - (c) where adverse effects cannot be minimised, they are remedied where practicable; then
  - (d) where more than minor residual adverse effects cannot be avoided, minimised, or remedied, *biodiversity offsetting* is provided where practicable; then
  - (e) if *biodiversity offsetting* of more than minor adverse effects is not practicable, *biodiversity compensation* is provided; then
  - (f) if *biodiversity compensation* is not appropriate to address any residual adverse effects:
    - i. the *REG activities* or *ET activities* must be avoided if the residual adverse effects are significant; but
    - ii. if the residual adverse effects are not significant, the *REG activities* or *ET activities* must be enabled if the national significance and benefits of the activities outweigh the residual adverse effects.
- 3) When considering *biodiversity offsetting* and *biodiversity compensation*, have regard to the principles set out in Appendix 1C and Appendix 1D.

#### Section 32AA evaluation

118 I consider that my recommended new Policy 24D is an appropriate way to achieve the purpose of the RMA and the relevant RPS objectives. This new policy provides a specific pathway and effects management framework for managing the effects of REG activities and ET activities on areas with significant indigenous biodiversity values consistent with proposed national direction recently consulted on. This will help address the policy gap created by Clause 1.3(3) of the NPS-IB (most likely as an interim policy framework) to ensure the RPS meets obligations under section 6(c) of the RMA while also recognising the importance of providing for REG and ET to help respond to climate change and the adverse effects this is having on the environment and the well-being of people and communities.

#### **Policy IE.2A**

119 Policy IE.2A is addressed in the planning evidence of DCG, HCC, Meridian, Nga Hapū, Transpower Waka Kotahi and WCC.

#### Director General of Conservation

120 Mr Brass considers that new recommended Policy IE.2A is appropriate as it will give effect to Clause 3.16 of the NPS-IB and because it is a function of local authorities to maintain

indigenous biodiversity at a regional and district level under section 30(1)(ga) and section 31(b)(iii) of the RMA. Mr Brass also notes the importance of protecting and maintaining indigenous biodiversity outside of SNAs to achieve no overall loss in indigenous biodiversity, consistent with the NPS-IB objective.

#### Hutt City Council

121 Mr McDonnell agrees in principle with Policy IE.2A to give effect to Policy 8 and Clause 3.16 of the NPS-IB. However, Mr McDonnell is of the view that:

121.1 Policy IE.2A should be a regulatory policy rather than consideration policy and timebound, consistent with Policy 23 and 24.

121.2 It is unrealistic to expect that the effects management hierarchy is applied to the loss of indigenous vegetation outside of SNAs as virtually every form of development has some impact on indigenous biodiversity. Mr McDonnell considers that this approach has the potential to result in significant costs for applicants to get ecological assessments and is concerned that these costs have not been fully assessed. Mr McDonnell also raises concerns that Policy IE.2A(c) would potentially require every urban tree to be scheduled due to the requirements in section 74 of the RMA.

122 To address these concerns, Mr McDonnell recommends that Policy IE.2A is amended to:

122.1 Remove the requirement to apply the effects management hierarchy.

122.2 Apply clause (c) at a regional/district level rather than activity level.

122.3 Include a sunset clause consistent with Policy 47 if it is retained as a consideration policy.

#### Meridian

123 Ms Foster considers that new Policy IE.2A also requires an exemption for REG activities consistent with that sought for Policies 24 and 24A as:

123.1 Clause 3.16 of the NPS-IB does not apply to REG activities due to Clause 1.3(3) of the NPS-IB.

123.2 Clause 3.6 of the proposed NPS-REG states that REG activities must be allowed within SNAs in certain circumstances and there are no additional restrictions for

areas without significant indigenous biodiversity values. Ms Foster is concerned that Policy IE.2A takes a more stringent approach than Clause 3.6 of the proposed NPS-REG for areas without significant indigenous biodiversity values and is therefore inappropriate for REG activities.

#### Ngā Hapū

124 Ngā Hapū supports new Policy IE.2A on the basis that it is consistent with Clause 3.16 of the NPS-IB and recognises that indigenous biodiversity outside of SNAs must also be managed in accordance with the effects management hierarchy.

#### Transpower

125 Ms Whitney requests a similar exemption for ET activities from Policy IE.2A to that requested by Ms Foster. Ms Whitney's reasons for this exemption for ET activities are the same as those outlined for her requested amendments to Policies 24 and 24A discussed above.

#### Waka Kotahi

126 Ms Heppelthwaite appears to support the intent of new Policy IE.2A but requests amendments to make it more concise. These recommended amendments include:

126.1 Deleting clause (a) on the basis that it does not add anything and instead referencing Policy 23 in the chapeau of the policy.

126.2 Deleting the last part of the explanation as it describes the reason the policy was introduced rather than how it is to be implemented.

#### Wellington City Council

127 Ms Cook is concerned that Policy IE.2A provides little value in helping to implement the NPS-IB but rather creates more confusion. For example, Ms Cook notes that Clause 3.16(2) in the NPS-IB refers to both the NPS-IB objective and policies rather than just the objective as proposed through Policy IE.2A. Ms Cook therefore recommends Policy IE.2A is deleted on the basis it is superfluous and has the potential to create conflict with the NPS-IB.

#### Analysis and recommendations

128 Firstly, in response to Mr McDonnell I note that Policy IE.2A as a consideration policy in Chapter 4.2 still functions as a regulatory policy that must be "given effect to" through

regional and district plans, “had regard to” through resource consent applications, and “had particular regard to” through notice of requirements. I consider that it is important for this direction to apply to consenting processes in the interim until regional and district plans give effect to the policy, particularly for proposed activities with significant adverse effects on (non-significant) indigenous biodiversity. I therefore consider that it is appropriate to retain Policy IE.2A as a consideration policy in Chapter 4.2 of the RPS.

129 Secondly, I acknowledge that applying the effects management hierarchy to indigenous biodiversity outside of SNAs could be seen as being overly onerous in some circumstances, but there is clear direction in Clause 3.16(1) of the NPS-IB to apply this approach and to change RPS provisions to be consistent with this requirement (Clause 3.16(3)). I also note that the direction in Clause 3.16(1) of the NPS-IB only applies to **significant adverse effects** on indigenous biodiversity, so my expectation is that this would not capture small-scale activities affecting indigenous biodiversity in urban and rural environments or require every urban tree to be scheduled under section 74 of the RMA. However, I agree with Mr McDonnell that clause (c) should be amended to make it clear that the maintenance of indigenous biodiversity applies at a regional and district level, consistent with the functions of local authorities under sections 30 and 31 of the RMA. This can be achieved through the following deletion to that clause “~~from any proposed activity~~”.

130 I also agree with Meridian and Transpower that Clause 3.16 of the NPS-IB does not apply to REG activities and ET activities and that Policy IE.2A could be overly onerous for these activities given the need to significantly increase renewable electricity generation capacity in New Zealand. However, I do not agree that these activities should be given a blanket exemption from managing adverse effects on indigenous biodiversity outside of SNAs as that would be inconsistent with section 5(2)(c) of the RMA and the functions of local authorities to maintain indigenous biodiversity under sections 30 and 31 of the RMA. I therefore recommend that Policy IE.2A is amended to include an additional clause that applies to REG activities and ET activities with direction to “avoid, remedy or mitigate adverse effects to the extent practicable”. This direction is consistent with the clauses in the proposed NPS-REG and proposed NPS-ET to manage the adverse effects of these activities outside areas with significant environmental values<sup>18</sup>.

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<sup>18</sup> Refer Policy 5 and Clause 3.7 in the proposed NPS-REG and Policy 6 and Clause 3.9 in the proposed NPS-ET.



131 I agree with Ms Heppelthwaite that the Policy IE.2A can be made more concise by deleting clause (a) and moving the reference to areas identified under Policy 23 to the chapeau of the policy.

132 I disagree with Ms Cook that Policy IE.2A is superfluous and will result in confusion and recommend no changes in response to her evidence.

#### Recommended amendments

133 My recommended amendments to Policy IE.2A are shown below:

#### **Policy IE.2A: Maintaining indigenous biodiversity in the terrestrial environment – 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 as 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) 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) 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; and~~

(c) avoiding, remedying or mitigating the adverse effects of REG activities and ET activities to the extent practicable.

#### **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 as identified under Policy 23 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.

#### Section 32AA evaluation

134 I consider that my recommended amendments to Policy IE.2A are an efficient and effective way to achieve the relevant objectives as these seek to improve clarity and

deliver the desired outcomes for indigenous biodiversity without changing the underlying policy intent. The amendments also ensure that there is an appropriate management framework to manage the effects of REG activities and ET activities on (non-significant) indigenous biodiversity consistent with national direction recently consulted on and statutory requirements in section 5(2), section 30 and section 31 of the RMA.

**DATE:**

**13 February 2024**

**Jerome Wyeth**

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