

Before the Hearings Commissioners

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

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

and in the matter of Wellington Regional Policy Statement

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

Dated 22 February 2024

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

1.0 My Primary Statement sets out my qualifications and I confirm my commitment to comply with the Environment Court's Code of Conduct for Expert Witnesses (2023).

1.1 My Primary Statement¹ describes:

- a. Waka Kotahi relief which includes submissions either supporting or seeking amendments to the various provisions;
- b. the statutory and higher order planning framework; and
- c. my recommendations on the Councils section 42A reports.

2 SCOPE OF STATEMENT

2.0 My summary statement today addresses changes where new matters are proposed in rebuttal where I do not share the same opinion or wish to update my position from my previous statement. It will cover:

- a. rebuttal evidence of Mr Wyeth; and
- b. rebuttal evidence of Ms Guest.

2.1 I provide an updated version of my primary statement **Appendix A** to reflect updates to my preferred position having considered the rebuttal evidence.

¹ Dated 30 January 2024.

3 AREAS AGREED

- 3.0 **Objective 16:** Ms Guest² proposes to add “where appropriate” as prefacing text to “enhance and restore”. While I sought deletion of “enhance and restore” (as I considered the outcomes have a different priority³ relative to ‘protect’), Ms Guest’s amendment resolves my concern.
- 3.1 **Policies 24, 24B and 24C:** Mr Wyeth proposes a range of changes which effectively modify Policy 24(a) – (c) to remove reference to NPSIB, NZCPS, and GWRC RPS Policies 18A and 18B and generally replicates the same in new policies 24B (NPSIB) and 24C (NZCPS) and for RPS Policies 18A and 18B, within the Policy 24 Explanation. Whilst I prefer a more streamline cross-reference approach, I consider Mr Wyeth’s modifications reflect the provisions of the NPSIB/NZCPS and appropriately reference RPS Policies 18A and 18B.
- 3.2 **Policy IE.2A:** Ms Guest has recommended adopting my proposed changes (along with others); these reflect wording refinements rather than material changes to the Policy.
- 3.3 **Anticipated Environmental Result 3 (AER3):** I sought deletion of no loss of ‘extent and condition’. Ms Guest proposes to amend to make AER(3) so that it applies on a region wide (rather than application specific) basis. This change addresses my concern regarding “no loss” being unattainable.
- 3.4 **Definition of indigenous ecosystem:** Ms Guest proposes the definition be deleted as there is not a demonstrable need (i.e. other RMA documents function suitably without a definition). I accept her analysis.

² Rebuttal Evidence, paragraph 34

³ As described in my primary evidence paragraphs 6.1 and 6.4.

4 FURTHER AMENDMENTS: POLICY 24A AND APPENDIX 1A

- 4.0 Mr Wyeth's changes proposed to Policy 24A (a) and (b) do not (in my view) materially change the policy outcome and amendments to 24A(c) will improve consistency. I support these changes.
- 4.1 Mr Wyeth⁴ also notes that the intent of Policy 24A and Appendix 1A 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 is assessed in a robust manner. I agree with this statement.
- 4.2 Mr Wyeth recommends⁵ inclusion of new Policy 24A clause (d):

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.

Mr Wyeth's proposed wording is:

Policy 24A (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.

- 4.3 While I appreciate Mr Wyeth's additional endeavours to recognise that future changes in knowledge may allow offsetting for Table 17 species/ecosystems, I consider it should be more clearly articulated along with consequential amendments of the Table 17 column heading *Policy 24A(d) No appropriate site, knowledge, methods, expertise, mechanism* and its associated footnote #4. The footnote in particular indicates a mandatory interpretation that it is not feasible to offset in the specified environments. Footnote 4 states:

⁴This column shows situations where it is not feasible to offset for residual adverse effects because there is no appropriate site,

⁴ Rebuttal Evidence, paragraph 81.

⁵ Rebuttal Evidence, paragraph 84.

knowledge, proven methods, expertise, or mechanism available to design and implement an adequate biodiversity offset. (bold added)

- 4.4 In my opinion, a further change to Policy 24A(d) wording is necessary (along with consequential changes to Table 17 and Footnote 4). I prefer an approach which is more enabling to provide greater flexibility to implement innovative strategies and achieve desired objectives while tempering outcomes to reflect the NPSIB examples of where offsetting may be inappropriate. I recommend the following:

Policy 24A(d): *When considering whether the feasibility of biodiversity offsetting or aquatic offsetting is inappropriate, recognise changes in knowledge, methods, expertise, or mechanism will occur over time and allow for these changes. The appropriateness of offsetting measures may be limited when applying to species and ecosystems listed in column Policy 24A(d) in Appendix 1A.*

- 4.5 While this amendment may seem enabling, it only comes into consideration where offsetting is an 'option' within the effects mitigation hierarchy (i.e. it would not apply to areas where effects are to be avoided outright e.g. NZCPS Policy 11(a)).

- 4.6 In relation to Appendix 1A, Table 17, a (perhaps more important) amendment is recommended to ensure that the wording in Appendix 1A allows for offsetting to accommodate advancements in technical knowledge. I propose the following amendments and also include a change to reference biodiversity offsetting (rather than compensation, which may be an error) to align with Policy 24A(d):

Appendix 1A: Limits to biodiversity offsetting and biodiversity compensation¹

[...]

- *Policy 24A(d) describes the situations where biodiversity offsetting compensation is likely to be inappropriate because there are no current (at insert date Plan Change Operative) technically feasible methods to secure gains in an acceptable timeframe.*

[...]

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

Wetland ecosystems

[Table Heading, third column] Policy 24A(d) No currently known (at [insert date Plan Change Operative]) appropriate site, knowledge, methods, expertise, mechanism⁴

[Footnote] ⁴ This column shows situations where it is not feasible to offset for residual adverse effects (at [insert date Plan Change Operative]) because there is no appropriate site, knowledge, proven methods, expertise, or mechanism available to design and implement an adequate biodiversity offset. Future advances in knowledge, methods, expertise, or mechanism will occur over time and these will be assessed on a case by case basis.

5 FURTHER AMENDMENTS: APPENDIX 1C

5.0 I note a difference between offsetting for aquatic environs in PC1 Appendix 1C relative to NPS-FW Appendix 6(2).

5.1 Appendix 1C: Biodiversity offsetting and aquatic offsetting (2) states (when referring to where offsetting is not appropriate):

*(2) When biodiversity offsetting is not appropriate: Biodiversity offsets are not appropriate in situations where indigenous biodiversity values cannot be **offset to achieve a net gain**. Examples of an offset not being appropriate include where:*

(a) [...] (bold added)

5.2 The NPS-FW Appendix 6(2) (Principles for aquatic offsetting), in relation to where offsetting is not appropriate states:

*(2) When aquatic offsetting is not appropriate: Aquatic offsets are not appropriate in situations where, in terms of conservation outcomes, the extent or values cannot be **offset to achieve no net loss, and***

***preferably a net gain**, in the extent and values. Examples of an offset not being appropriate would include where:*

(a) [...] (bold added)

5.3 In short, Appendix 1C requires a **net gain** for aquatic offsets which is a higher requirement than the NPS-FW Appendix 6 which requires no net loss and **preferably a net gain** in relation to natural inland wetlands and river extent of values.

5.4 I consider an amendment to Appendix 1C is required to align outcomes with the NPS-FW for aquatic offsetting in relation to natural inland wetlands and river extent of values.

(2) When biodiversity offsetting is not appropriate: Biodiversity offsets are not appropriate in situations where indigenous biodiversity values cannot be offset to achieve no net loss (for aquatic offsets for natural inland wetlands and river extent of values) and a net gain (for all other indigenous biodiversity values). Examples of an offset not being appropriate include where:

(a) [...]

(c) there are no technically feasible options by which to secure no net loss (for aquatic offsets for natural inland wetlands and river extent of values) or secure gains (for all other indigenous biodiversity values) within an acceptable timeframe.

6 CONCLUSION

6.0 Overall, I am in agreement with the S42A Rebuttal provisions in relation to:

- a. Objective 16;
- b. Policies 24, 24B and 24C;
- c. Policy IE.2A;
- d. Anticipated Environmental Result 3 (AER3); and

- e. Removal of definition of indigenous ecosystem.
- 6.1 I consider further amendments are required to:
- a. Policy 24A(d) and associated Appendix 1A to reflect changes in offsetting techniques which may occur in the future; and
 - b. Appendix 1C (Biodiversity offsetting and aquatic offsetting) to recognise the different requirements for aquatic offsets for natural inland wetlands and river extent of values under the NPS-FW.
- 6.2 My recommended amendments are included as Attachment A and update those attached to my primary statement.

Cath Heppelthwaite
22 February 2024

Attachment A: Proposed Changes

Base text is taken from Rebuttal Evidence of Ms Guest Appendix 1 dated 13 February 2024 with changes accepted. All changes are in red text. New text is underlined and proposed deletions in ~~strike-through~~.

Policy 24A and Appendix 1A

Policy 24A [...]

~~(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 likely to be inappropriate for those species and ecosystems listed in column Policy 24A(d) in Appendix 1A; and~~

(d) When considering whether the feasibility of biodiversity offsetting or aquatic offsetting is inappropriate, recognise changes in knowledge, methods, expertise, or mechanism will occur over time and allow for these changes. The appropriateness of offsetting measures may be limited when applying to species and ecosystems listed in column Policy 24A(d) in Appendix 1A; and: [...].

Appendix 1A: Limits to biodiversity offsetting and biodiversity compensation¹

[...]

• Policy 24(d) describes the situations where biodiversity offsetting compensation is likely to be inappropriate because there are no current (at [insert date Plan Change Operative]) technically feasible methods to secure gains in an acceptable timeframe.

[...]

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

Wetland ecosystems

[Table Heading, third column] Policy 24A(d) No currently known (at [insert date Plan Change Operative]) appropriate site, knowledge, methods, expertise, mechanism⁴

[Footnote] ⁴ This column shows situations where it is not feasible to offset for residual adverse effects (at [insert date Plan Change Operative]) because there is no appropriate site, knowledge, proven methods, expertise, or mechanism available to design and implement an adequate biodiversity offset. Future advances in knowledge, methods, expertise, or mechanism will occur over time and these will be assessed on a case by case basis.

Appendix 1C: Biodiversity offsetting and aquatic offsetting

(2) When biodiversity offsetting is not appropriate: Biodiversity offsets are not appropriate in situations where indigenous biodiversity values cannot be offset to achieve no net loss (for aquatic offsets for natural inland wetlands and river extent of values) and a net gain (for all other indigenous biodiversity values). Examples of an offset not being appropriate include where:

(a) [...]

(c) there are no technically feasible options by which to secure no net loss (for aquatic offsets for natural inland wetlands and river extent of values) or secure gains (for all other indigenous biodiversity values) within an acceptable timeframe.