

Greater Wellington Regional Council

Transcription Hearing Stream Six – Indigenous Ecosystems

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

- Hearing Dates:** Tuesday 20th to Thursday 22nd February 2024
- Location:** Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011
- Hearing Panel:** Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France
- Hearing Advisors:** Jo Nixon
Whitney Middendorf

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 - Submitter: Director-General of Conservation S32

Hearing Stream Six Indigenous Ecosystems – Submitter Record of Appearance

Submitter Organisation/Person	Names of people who appeared at the Hearing	Appearing
Director-General of Conservation S32	<ul style="list-style-type: none"> • Murray Brass, Senior RMA Planner 	Online
Horticulture New Zealand S128	<ul style="list-style-type: none"> • Emily Levenson, Environmental Policy Advisor 	In person
Hutt City Council S115	<ul style="list-style-type: none"> • Torrey McDonnell, Principal Planner 	In person
Meridian Energy S100	<ul style="list-style-type: none"> • Christine Foster, Planning Expert • Andrew Feierabend, Company Representative 	In person
Ngā Hapu o Otaki FS29	<ul style="list-style-type: none"> • Denise Hapeta - Chairperson, Ngā Hapū o Ōtaki • Dr Aroha Spinks - Ngā Hapu o Ōtaki • Melanie McCormick - Consultant for Ngā Hapū o Ōtaki 	Online
Rangitāne o Wairarapa S168	<ul style="list-style-type: none"> • Maggie Burns, Senior Planner • Amber Craig, Pou Rautaki Whenua 	Online
Royal Forest & Bird Protection Society Inc S165	<ul style="list-style-type: none"> • May Downing, Lawyer 	In person
Transpower New Zealand Ltd S10	<ul style="list-style-type: none"> • Pauline Whitney, Boffa Miskell Ltd • Sarah Shand, Environmental Planner 	In person
Wairarapa Federated Farmers S163	<ul style="list-style-type: none"> • Elizabeth McGruddy - Senior Policy Advisor • Peter Matich, Principal Planner 	Online
Waka Kotahi – NZ Transport Agency S129	<ul style="list-style-type: none"> • Cath Heppelthwaite, Planner 	Online
Wellington City Council S140	<ul style="list-style-type: none"> • Maggie Cook, Senior Planning Advisor 	In person
Wellington Fish and Game Council S147	<ul style="list-style-type: none"> • Craig Malone, Counsel • Ami Coughlan, Expert Witness - Freshwater / Ecology • Lily Campbell, Expert Witness - Planning 	Online
Wellington International Airport Ltd S148	<ul style="list-style-type: none"> • Amanda Dewar, Barrister • Claire Hunter, Planner, Mitchell Daysh 	Online

Transcription

Hearing Stream Six Indigenous Ecosystems

Day One

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Tuesday 20th February 2024

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Karakia tātou.
2
3 Admin: Ngā mihi o te rā ki te whānau e huihui nei. Kia tau te rangimārie, kia whakatapua
4 me ngā mea, e whakapono ana tātou. Haumi e, hui e tāiki e.
5
6 Chair: Kia ora. Tēnā koe Ms Guest.
7
8 Tēnā koutou katoa. Nō Heraka aku tīpuna. Nō Poneke ahau. Kei Taputeranga au
9 e noho ana. Tokotoru aku tamariki. Ko Dhilum Nightingale tōku ingoa. Nō reira,
10 tēnā koutou, tēnā koutou, tēnā koutou katoa.
11
12 Mōrena. Good morning. My name is Dhilum Nightingale. I am a Barrister in
13 Kate Shepherd Chambers and an Independent Hearings Commissioner. I live in
14 Taputeranga, Island Bay in Te Whanganui-a-Tara, Wellington.
15
16 Nau mai haere mai ki te kaupapa o te rā. It is a pleasure to welcome you all to
17 the hearing of submissions on the indigenous ecosystem topic, Hearing Stream
18 6, for the Proposed Change 1 to the Regional Policy Statement for the
19 Wellington Region.
20
21 We are the Independent Hearing Panels that will be hearing submissions and
22 evidence and making recommendations to Council on Proposed Change 1. We
23 are sitting as two panels with overlapping membership and will hear and

24 consider both the freshwater and non freshwater provisions of the change
25 document.
26
27 I have been appointed as Chair of both Panels.
28
29 I would like to welcome the other panel members to please introduce
30 themselves.
31
32 Paine: Kia ora. Tēnā koutou katoa. Ngā mihi nui ki a koutou. Ko wai au? Ko Glenice
33 Paine tōku ingoa. I am an Environment Court Commissioner on both panels. Kia
34 ora.
35
36 Wratt: Kia ora koutou katoa. Ko Gillian Wratt tōku ingoa. I am based in Nelson. My
37 background is in the science sector. I have previously been Chief Executive at
38 Antarctica New Zealand and at Cawthron Institute. I now have a number of
39 governance roles in both the science sector and conservation sector. I'm an
40 Environment and Freshwater Commissioner and was initially appointed onto the
41 Freshwater Panel, now on both panels. Kia ora.
42
43 Kara-France: Tēnā koutou katoa. Te whare e tū nei, tēnā koe. E ngā mana whenua, e ngā iwi,
44 tēnā koutou. E ngā rangatira i te ruma, tēnā koutou. Ngā hau e whā, ngā iwi e
45 tau nei, tēnā koutou, tēnā koutou, tēnā koutou katoa. Ngā mate, ngā aituā o ō
46 koutou, ara o mātou, ka tangihia e tātou i tēnei wā. Haere, haere, haere. E tika
47 ana me mihi ki tō tātou Kīngi Māori a Tūheitia, te Pou Herenga Waka, te Pou
48 Herenga Iwi, te Pou Herenga Tangata Māori katoa, Paimārire. Karanga mai i a
49 mātou e whai nei i ngā taonga o ngā tūpuna. Nō reira, āpiti hono ki tātai hono, te
50 hunga mate ki te hunga mate, te hunga ora ki te hunga ora. Tēnā koutou, tēnā
51 koutou, tēnā koutou katoa.
52
53 Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato Tainui, ko Ngāti Koroki
54 Kahukura, ko Ngāti Tipa, ko Ngāti Kōata ki Rangitoto ki te tonga. Ko
55 Rongomaiwahine, ko Kahungunu, ko Ngāti Pahauwera, ko Ngāti Popoia, ko
56 Maungaharere [03.30] ki Tongo. Ko Ngāti Popoia. Ko Ngāti Whakaari, ko Ngāti
57 Ruruku, ko Ngāti Kahungunu. Ko Ngāti Tūwharetoa, ko Ngāti Te Rangi Itā. Ko
58 Te Ati Haunui-a-Pāpārangī, ko Tūmango, ko Tūpoho, ko Paerangi, ko Ngā
59 Rauru, ko Ngāti Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā
60 takiwā. Nō reira, tēnā tātou katoa.
61
62 Independent Hearing Commissioner. I am on both panels. Kia ora.
63
64 Chair: Kia ora. If we could turn to the Council team in the room. If the reporting
65 officers, the experts, Counsel and staff could kindly introduce themselves.
66
67 Guest: Mōrena koutou. Ko Pam Guest tōku ingoa. He Kaitohutohu Matua ahau. I am
68 the Reporting Officer for Council on this topic.
69
70 Wyeth: Kia ora koutou. My name is Jerome Wyeth. I am a Principal Planner at SLR
71 Consulting and Joint Reporting Officer for Hearing Stream 6 with Ms Guest.
72
73 Maseyk: Kia ora koutou. I'm Fleur Maseyk. I work with the Catalyst Group and I am
74 filing expert evidence on offsetting to the Panel today in support of the GWRC
75 team. Kia ora.

76
77 Crisp: Mōrena, my name is Phillipa Crisp. I work casually for Greater Wellington but
78 I am providing the technical evidence.
79
80 Anderson: Mōrena tatou. Ko Kerry Anderson tōku ingoa. I'm Council's lawyer.
81
82 Chair: Kia ora. Just some very brief housekeeping points.
83
84 Hearings are being livestreamed and recorded for transcription purposes. If you
85 could please speak into the microphones and use the button when you are talking,
86 and say your name because that will help for the transcript.
87
88 We are starting the Indigenous Ecosystems Hearings today with presentations
89 from the Reporting Officers, technical experts and also the Council's legal team.
90 Have you got a preference for panel questions at the end of your presentations,
91 that you would prefer that? Great, we'll try to keep to that.
92
93 Then after the lunch adjournment we have got two submitters this afternoon who
94 are joining us remotely. Then we have submitters Wednesday and Thursday, and
95 that will take us to the end of this hearing stream.
96
97 We are tasked with ensuring the hearing runs efficiently and that everyone who
98 wishes to present can be heard, so in accordance with the hearing procedures,
99 we are ask that submitters do keep to their allocated hearing time, which is ten
100 minutes, unless and extension has been requested in advance. We have had some
101 requests for extensions and we have accepted these within the available time.
102
103 The Hearing Advisors, Ms Middendorf and Ms Nixon will be letting submitters
104 know when we are reaching close to the end of their allocated time.
105
106 Lastly, if we could just check that cell phones are turned off or on silent mode.
107 Maybe just also note that there were a lot of submissions on this topic, as with
108 all the other topics. We have read everyone's submission, so even if you are not
109 presenting we have read your submission and will be taking it into account in
110 our deliberations.
111
112 Are there any legal issues or procedural matters anyone would like to raise before
113 we begin?
114
115 [Nil response]
116
117 Thank you. I will pass over to Ms Guest and Mr Wyeth.
118
119 Guest: Mōrena koutou. Thank you so much for the opportunity to talk to you today
120 about this topic on indigenous ecosystems. We are going to present as a team.
121 I'm just going to set the context for Change 1 Provisions and why we decided to
122 proceed at the same time as the Urban Development Provisions. Mr Wyeth is
123 going to talk about giving effect to the NPS-IB and also Policy 24, 24(a) which
124 are quite hot topics from submitters, and then Dr Maseyk is going to bring in her
125 technical evidence on offsetting compensation and Dr Crisp who prepared the
126 Schedule Appendix 1A which is around all the species and ecosystems that are
127 threatened and vulnerable will talk to that.

128
129 It's kind of a bit of a nested presentation, so we thought it might be useful to hear
130 us all together, because a question to me might best be answered by one of the
131 other presentations.

132
133 I'm just going to give a brief contextual background and then pass onto Mr
134 Wyeth.

135
136 Just want to set the scene and talk about the Change 1 Provisions and key matters
137 raised by submitters, then briefly into the key recommendations.

138
139 I guess the start was really wanting to look at why did we go ahead of the NPS-
140 IB and why did we want to get indigenous biodiversity into Change 1. I think
141 we need to look at the bigger picture. I think we are all really well aware of the
142 global concerns around biodiversity. In the last fifty years there has been a 69
143 percent loss of world wildlife populations across all habitat types, which is pretty
144 extreme and very concerning. New Zealand is part of that picture.

145 [00.10.00]

146 We acknowledge that a significant amount of loss of our biodiversity and
147 ecosystems happened post settlement, so sometime in the past, but ongoing
148 pressures including pests, land use change, development, extraction and climate
149 change are continuing to put huge pressure on those ecosystems and species that
150 remain.

151
152 So despite the fact that a lot of the loss happened historically, it's an ongoing
153 concern. We've got 4,000 species at risk of extinction today; and not only is the
154 concern around loss of biodiversity, but I think it's important to recognise the
155 ecosystem services that go along with our indigenous ecosystems; so that service
156 is not just to nature but to people. It's part of the picture. It's not just about the
157 birds and the bees. It's about climate change and resilience and how intertwined
158 they are.

159
160 Just quickly we had a Stay of the Environment Report prepared and Dr Maseyk
161 was one of the lead authors on that, just showing what the state of our
162 biodiversity was regionally, and that is one of the supporting documents for this
163 hearing stream.

164
165 So quite a concerning picture around the risk of extinction for our local species
166 and our ecosystems. This shows changes of terrestrial ecosystems since
167 settlement; so quite significant changes across our region.

168 A quick picture of this is the extent of wetlands before European settlement and
169 we're down to this. Lake Wairarapa wetlands and Wairarapa moana. This is the
170 largest chunk regionally, but tiny patches across the rest of the region. It's a pretty
171 dire picture.

172
173 As I said earlier, I think it's important to recognise that link with climate change.
174 We tried to interlink the provisions for the climate chapter that we talked about
175 last year and show how biodiversity and nature-based solutions provide
176 significant opportunities for climate resilience as well as looking at biodiversity
177 itself.

178

179 Just a few of the examples: looking for opportunities where we can actually do
180 both, so a win-win. This is an example over in Porirua where they put together
181 a stormwater management of constructed wetland to treat stormwater and at the
182 same time they planted indigenous species. Quite a lovely local example that
183 was commissioned last year.

184
185 Also looking at other ways of bringing in nature into the environment and using
186 indigenous biodiversity as part of other projects at the Council. This is a project
187 that Council is doing called 'Room for Rivers to Move'. So rather than
188 constructing our traditional stopbanks we are looking at setbacks and letting the
189 river move and do its natural processes, providing flood protection for
190 downstream communities and at the same time replanting our native species in
191 that extra room that we have given the river. A win-win for biodiversity, for
192 natural processes and for people.

193
194 Then the third example is bringing nature into urban development. You might
195 recall Mr Farrant and I presented on this last year, looking at urban
196 intensification and how there are great opportunities in there to bring
197 biodiversity into our urban areas for things like green rooves, permeable paving,
198 rain gardens and street trees. We can actually look for opportunities to use native
199 plants as part of that.

200
201 It's not just about preserving nature for nature's sake. There's a little bit of self-
202 interest in there was well, and recognising how important that is for our future.

203
204 Here is Change 1. We have had some criticism about why we went ahead of the
205 NPS-IB. Basically the RPS has notified the operative RPSs in 2013 – so ten years
206 ago. It's pretty much out of date. It doesn't look at the National Biodiversity
207 Strategy and a number of other more recent documents. It focuses only on
208 significant biodiversity, so Policy 23 was only about putting our criteria for
209 significant sites and protecting that. It didn't give effect to the RMA s.30 and
210 s.31 functions which is about maintaining biodiversity generally.

211
212 As I mentioned earlier the State of Environment Report shows that we have got
213 ongoing pressure on all species and ecosystems across the region, and that our
214 current approach while we've had a few wins, such as the land, air and some
215 other notable projects, we are pretty much failing to make a lot of difference
216 across the region, and we need to look at how we can have a step change as part
217 of our management approach.

218 [00.15.00]

219 While the NPS-IB was pending, it has been for many years. I have been around
220 for long enough to know. I had friends on working on the first version in 1999
221 and it's been promised numerous times over that period. It didn't seem wise to
222 wait.

223
224 While I say that, we also were privileged to see the exposure draft and were able
225 to align our provisions with that we as we drafted.

226
227 Just quickly running over the amended objectives. I know we'll take them as
228 read, but just quickly:

229

230 Objective 16 – is around protecting significant biodiversity. We looked at
231 recognising ecosystem processes as part of that and also the NPS-IB around
232 giving effect to the decision-making principles. We have brought in a new
233 objective around maintaining, enhancing and restoring biodiversity generally,
234 and that was to give effect to requirements already in place under the Resource
235 Management Act. We brought in two new objectives around recognising and
236 providing for Māori values and their role as kaitiaki, and similarly for
237 recognising and providing for land owner, community values and roles. So a new
238 package of objectives that complement each other.

239
240 As I said, there was really only one main policy around biodiversity and we have
241 looked at those policies.

242
243 Policy 23, which is around identifying significant sites has been in effect since
244 2013, and actually the previous version of the RPS had also had criteria about
245 identifying significant sites; yet more than ten years after that only half of our
246 district plans have actually identified significant sites. We wanted to bring a little
247 bit more pressure into that process and we added a deadline into Policy 23 and
248 24 – both identifying sites and having our district and regional plan have
249 appropriate provisions to protect them.

250
251 We also have been working in the space of offsetting compensation for some
252 time now and we were finding that we weren't getting particularly good results.
253 People were not looking at the principles for offsetting and compensation which
254 are required and which mimic internationally recognised best process principles;
255 and so we wanted to uplift and highlight some of those key principles,
256 particularly around how to manage or enable offsetting, or actually whether to
257 allow offsetting and compensation in sites where we have threatened and rare
258 species.

259
260 We asked Dr Crisp and our science team to pull together a list of what those
261 species and ecosystems were, and actually to uplift them into the regional policy
262 statement to make them much more visible and to highlight the need for
263 consultants and consent applicants to actually address that concern as part of that
264 process.

265
266 Again, a really important role we see of the regional policy statement to give
267 regional specificity to national direction and to assist that consenting process.

268
269 We also brought in some additional policies around recognising and providing
270 for mana whenua roles and values, and similarly for land owner community roles
271 and values – very much about supporting and enabling those.

272
273 Then there is a new Policy IE.3 which is around setting strategic priorities for
274 restoration – strategic restoration targets and priorities. Again we are seeing quite
275 a lot of fantastic restoration work around the region by both communities, mana
276 whenua and the Council. Thought it would be quite valuable to actually step
277 back and look at having a much more strategic approach to that and making sure
278 that the limited amount of money we have is going into the right place to get the
279 best benefits. That very much aligns now that the NPS-IB has got in the
280 terrestrial space the need for a regional biodiversity strategy; so very much a
281 policy that aligns across the two.

282
283 The key matters raised by submitters: there was some concern about what's the
284 rush and that we had overstated the significance of biodiversity loss. It's
285 particularly come through from Federated Farmers who have noted that things
286 haven't really changed much over the last twenty or thirty years; so there's not
287 really that need for importance. I think stepping back we need to look at the
288 bigger picture on that.

289
290 Again there were a number of parties who were concerned that we didn't wait
291 for the NPS-IB and then when it was actually gazetted after the RPS was
292 notified, felt that we should have withdrawn the provisions and gone back and
293 [00.20.00] implemented everything in full. Mr Wyeth will talk a little bit about why we
294 chose not to do that.

295
296 I think there was concern around the objectives around the lack of qualification
297 for restoration. There was a concern that having just protect and restore implied
298 that we wanted restored back to what was original, rather than actually
299 restoration where it was appropriate.

300
301 In terms of the policies there was support for the amendments. There was also
302 requests for some amendments for clarity. The requests mainly from the
303 territorial authorities to delete the dates for significant natural area identification.
304 There was concern around the increase in specificity that we had brought in for
305 the effects management hierarchy; and now that Mr Wyeth has recommended
306 that we bring in some of the effects management hierarchy from the National
307 Policy Statement exemptions there, there's been some requests around either
308 accepting or not – going back to the previous version.

309
310 Again, concerns around putting a ten percent nett gain or nett benefit into the
311 effects management no nett loss picture, and also the Appendix 1A limits. There
312 were a number of parties who were concerned about restoration and considered
313 that it was a regulatory requirement, when that is not the case.
314 Key recommendations: basically the recommendations are that we retain the
315 new provisions. There were a number of submitters asked that they not be put
316 through the Freshwater Planning Process and I have supported that and
317 suggested that the provisions be moved to the Schedule 1 process. Reluctantly I
318 have agreed to recommend that we could qualify restoration in the objective,
319 basically to clarify that it's not a regulatory approach in the RPS.

320
321 Then amendments to better give effect to the NPS-IB and other National Policy
322 Statements. Mr Wyeth will talk more to that.

323
324 We have looked at bringing in some of the detail from the NPS for indigenous
325 biodiversity and Mr Wyeth has talked a lot about the pros and cons of that, but
326 have recommended that we add the criteria for terrestrial biodiversity to give
327 some more clarity about which criteria apply to which environment.

328
329 The effects management hierarchies and exemptions will be talked about by Mr
330 Wyeth.

331
332 I brought it the restoration priorities for terrestrial biodiversity from the NPS-IB
333 and we have also aligned the definitions with those for clarity.

334
335 I think that's it for me. I will pass onto Mr Wyeth, unless there is anything urgent
336 you want to clarify. Thank you.

337
338 Wyeth: While we are waiting, I will apologise in advance: my presentation is far less
339 interactive and colourful compared to Ms Guest.

340
341 Thank you panels. I am just going to cover five key issues addressed in my s.42A
342 rebuttal evidence and my recommendations in relation to those issues.

343
344 The first key issue, as Ms Guest has touched on, relates to the NPS-IB which
345 obviously came into effect after Change 1 was notified, and obviously this is a
346 key issue for this hearing stream.

347
348 As the panel are aware there is mixed views from submitters on this issue. Many
349 submitters seek to get greater alignment with Change 1 with the gazetted NPS
350 versus other submitters are seeking today to a future variation or RPS change
351 process.

352
353 In my s.42A Report I set out the reasons why I think Change 1 should give effect
354 to certain NPS-IB provisions where practicable and within scope, and that
355 relates to the clear statutory requirements in the RMA and also in the NPS-IB to
356 give effect to the NPS as soon as reasonably practicable.

357 [00.25.00]
358 As Ms Guest has outlined, Change 1 is notified to align with the exposure draft,
359 and there are a lot of submitters seeking that it aligns with the gazetted NPS; so
360 in my opinion there is clear scope within Change 1 and submissions to give
361 effect to certain NPS-IB provisions.

362
363 Further, many of the NPS provisions are highly directive in terms of the changes
364 they require to RPSs and there is limited scope in how they are given effect to.
365 In my opinion, there is also a high level of certainty that given effect to the NPS
366 also meets key requirements of the RMA relating to protection and maintenance
367 of indigenous biodiversity including s.6(c), s.6(e) and the functions of local
368 authorities to maintain indigenous biodiversity in s.30 and s.31.

369
370 As such, we developed some guiding principles to make recommendations
371 around how Change 1 should give effect to certain NPS provisions, which is set
372 out in detail in Appendix 3 of the S.42A Report. Those provisions focus on
373 giving effect to those highly directive NPS provisions that specifically require
374 changes to RPS as a priority, and also recognising that some provisions in the
375 NPS require further technical work and engagement and should be given effect
376 to for a future RPS change process.

377
378 The second related issue is the most appropriate approach to give effect to the
379 NPS-IB which Ms Guest has touched on. Again there are highly divergent views
380 between submitters on these issues. I agree with the sentiments expressed in
381 submissions that RPS should generally seek to provide more regional specificity
382 and address conflicts in higher order documents when given effect to an NPS
383 and there is clear case law on this. However, when given effect to highly
384 directive provisions like the NPS, there is often limited discretion in how these
385 are given effect to. This is a particular issue for Policy 24 as it was unclear in

386 the notified policy how it give effect to higher order provisions relating to the
387 protection of significant biodiversity values.

388
389 In my opinion Policy 24 needs to explicitly give effect to this higher order
390 direction. The question is how best does that?

391
392 In my evidence I have set out three main drafting approaches to do this and the
393 pros and cons associated with this. In my opinion there is no single right answer
394 – it is more a tradeoff in terms of the efficiency, certainty, usability and longevity
395 of the provisions.

396
397 On balance, I recommend in my rebuttal evidence that the RPS replicates these
398 highly directive provisions, in particular clause 3.10 and 3.11 in the NPS-IB for
399 a new Policy 24 that applies in the terrestrial environment.

400
401 I also recommend the new Policy 24(c) that applies in the coastal environment
402 that largely mirrors Policy 11 of the NZCPS.

403
404 While I acknowledge that this results in some duplication and some detailed
405 drafting of the NPS, it avoids the need to cross-reference multiple documents
406 that may soon become out of date. It helps ensure alignment with RPS
407 terminology and in my opinion it is likely to provide the most certainty and
408 longevity around the provisions that apply in the region.

409
410 The next related issues relates to Policy 24 and Appendix 1A, which Dr Maseyk
411 and Dr Crisp will discuss in detail. I will just touch on some of the key provisions
412 from a planning perspective.

413
414 Those issues include the policy intent not being particularly clear in the notified
415 amendments; it being unclear how other NPS-IB provisions relating to offsetting
416 compensation are to be considered and how the provisions or direction relating
417 to offsetting compensations within the overall effects management hierarchy.

418
419 Further submitters have raised numerous concerns with these provisions, in
420 particular that the list of ecosystems and species is overly extensive, restrictive,
421 and static and will effectively preclude offsetting in the region; and also a
422 number of concerns around the ten percent nett gain requirement is unworkable
423 and not supported by higher order documents.

424
425 Overall I consider that the general intent of these amendments is entirely
426 appropriate as they align and give effect to the principles in NPS and
427 international best practice when offsetting and compensation may be
428 inappropriate due to the vulnerability or irreplaceability of the species affected,
429 or there being no technically feasible methods to secure going through an
430 accepted timeframe.

431
432 The list in Appendix 1A, which Dr Crisp will talk about, essentially provides a
433 list of ecosystems and species that meet this criteria which are considered to be
434 an effective approach to give effect to the NPS-IB.

435
436 Through discussions with Ms Guest and Dr Maseyk also recommending that the
437 policy direction is split between Policy 24 and 24A to make the policy intent

438 clearer, and also recommend changes to make it clear that the list of species in
439 Appendix 1A is not static, and that the current free status of species need to be
440 [00.30.00] considered at the time as relevant for planning and consenting processes.

441
442 The next issues relates to manging effects on indigenous biodiversity in the
443 coastal environment and this has obviously come up as a key issue in the
444 evidence of Wellington Airport and Forest & Bird. This relates to the overlap
445 between the NPS-IB and the NZCPS in the terrestrial coastal environment, and
446 that is because the NPS obviously provides a clear pathway and affects
447 management hierarchy for specified infrastructure, whereas Policy 11 is a hard
448 avoid policy. The potential conflict between these policies therefore clear in my
449 opinion.

450
451 While I acknowledge the operational functional requirements of regionally
452 significant infrastructure which makes access to the effects management
453 hierarchy and ability to offset important in some circumstances, however the
454 RPS much give effect to the clear direction in Policy 11 to avoid adverse effects
455 on indigenous biodiversity; and also clause 1.42 of the NPS-IB which states the
456 NZCPS prevails where there is conflict between these two documents.

457
458 My understanding is that the direction to avoid certain adverse effects in Policy
459 11A does not allow for a full effects management hierarchy to be applied, this
460 is because 'avoid' means occurrence of those adverse effects and offseen by its
461 very nature as a positive effect intended to address a residual adverse effect that
462 cannot be avoided.

463
464 As such I recommend that the direction in Appendix 1A that offsetting is not
465 allowed where it would affect those species and ecosystems that meet the criteria
466 in Policy 11A of the NZCPS is retained and a similar statement is added to
467 Policy 24A.

468
469 I also recommend that the explanation to new Policy 24(c) make it clear it
470 prevails over Policy 24(b) where there is conflicts consistent with the direction
471 in the NPS-IB.

472
473 The last issue I will cover relates to managing the effects of renewable electricity
474 generation and electricity transmission activities on significant biodiversity
475 values and specific consideration of these activities is required due to the carve-
476 out in clause 1.3 of the NPS-IB which states that nothing in that policy statement
477 applies to those activities.

478
479 Specific consideration of these activities is also required in my opinion due to
480 the essential role in responding to the climate change crisis, and this is reflected
481 in the proposed amendments to the NPS for renewable electricity generation and
482 electricity transmission which was consulted on last year. Those amendments
483 are intended to provide a clear and more specific and more enabling pathway for
484 these activities when they affect areas with significant environment values
485 including biodiversity.

486
487 The key issue is there for timing and some uncertainty around when these
488 amendments may come into effect and what the final policy will look like,
489

490 In broad terms I agree with Meridian and Transpower that Policy 24 as notified
491 could unintentionally be more restrictive for these activities than other specified
492 infrastructure, which is not the intent; and I also with Forest & Bird that the
493 NPS-IB has created a gap with respect to these activities that the RPS needs to
494 address to meet obligations under s.6(c).

495
496 In my opinion a new policy specific to these activities is the most effective and
497 efficient option to address that gap, and I agree with Meridian that it should be
498 aligned with the effects management policy recently consulted on by
499 government.

500
501 That said, I recommend a new Policy 24 that is specific to Renewable Energy
502 Generation and ET activities consisted with the NPS amendments consulted on,
503 and I consider that appropriate as this affects management policy, it provides
504 gateway tests and it affects management framework to ensure there is a pathway
505 for these activities; while also ensuring that adverse effects are appropriately
506 managed and that the activity is avoided when there are significant adverse
507 effects on biodiversity.

508
509 That's me.

510
511 Maseyk: Kia ora. I have put together a couple of slides to draw out some of the key points
512 of my evidence. Hopefully that will help provide the context of why the policy
513 framework around offsetting and compensation has been developed in the way
514 it has.

515
516 [00.35.00] Just to start off, to reiterate that biodiversity of setting is complex, challenging
517 and high risk, and this is something we really need to keep front and centre of
518 our minds in the context of our dual biodiversity and climate crises. Therefore
519 policy frameworks need to recognise this risk and take up a cautionary approach.
520 Defining limits to acceptability of offsetting and compensation is a key
521 component of that necessary caution.

522
523 The effects management hierarchy itself also reflects this need for caution by
524 prioritising avoid as a first step in that hierarchy and then requiring strict
525 sequential application of the subsequent steps thereafter. I will talk a bit more
526 about that effects management hierarchy in a moment.

527
528 The other key point I wish to reiterate is that biodiversity offsetting and
529 biodiversity compensation are distinct responses, they are not interchangeable.
530 They generate different outcomes.

531
532 When we are thinking about no nett loss outcomes from biodiversity offsetting
533 we need to keep in mind that if done well a no nett loss returns a neutral outcome,
534 and that means there will be no loss in that particular biodiversity element, but
535 there's also no gain. It's just a neutral outcome and I will illustrate that in a
536 moment as well, a bit further in a moment. But, nett gain outcomes do achieve
537 positive outcomes for target biodiversity over and above that point of no nett
538 loss.

539
540 The other key thing that I think sometimes gets forgotten is that application of
541 biodiversity offsetting and compensation is a discipline and it does require

542 relevant technical expertise at all stages from design, implementation and
543 monitoring.

544
545 Turning now to the effects management hierarchy this is Figure 1 in my evidence
546 on page-10. Set out there is the steps. On the left hand side you see we start with
547 a void. Those first three – avoid, minimise and remedy – are all responses to
548 adverse effects on biodiversity in the first instance. Then after you have applied
549 those steps any residual adverse effects on target biodiversity would be subject
550 to an offset first and foremost before you would move onto compensation.

551
552 The sixth step there on the far right, avoiding activity, is an additional step that
553 has come in via clear policy direction in National Policy Statements and the RPS
554 and NRP, that directs that where compensation is not possible that activity
555 should be avoided.

556
557 The other key thing to consider here when thinking about effects management
558 hierarchy is when you're at that left end of the hierarchy, at the avoid end, we
559 are avoiding effects and that provides the most certainty for biodiversity
560 outcomes. Clearly we are looking after what we need to look after and we're not
561 doing any harm. That reduces at each step as we moved along that hierarchy to
562 the far end at compensate where we have definite losses, uncertain outcomes
563 and continued decline. Also we are going from a proactive protection and avoid
564 to a reactive response to losses and decline; and critically that certainty reduces
565 along that hierarchy as well, from being very high around biodiversity outcomes
566 on the left side where we are avoiding effects in the first instance to low certainty
567 at the right end of that spectrum.

568
569 The effects management hierarchy in itself needs some further policy direction
570 in terms of its application in practice. Some of those points where that further
571 direction is required is the scale of adverse effects that trigger the application of
572 the hierarchy in the first instance. When is biodiversity offsetting or biodiversity
573 compensation inappropriate? And, it also needs a clear link to the principles
574 underpinning the standards and rigour required for both offsetting and
575 compensation – and that's including direction around limits to both of those
576 things.

577 [00.40.00]

578 Policy 24A has been drafted up with that in mind to provide that direction. It
579 aligns with the National Policy Statement for indigenous biodiversity on the
580 magnitude of effect and the principles that underpin offsetting and
581 compensation, and that also aligns with the NPS-FM.

582
583 The other addition is the provision of regional specificity on species and
584 ecosystems that are vulnerable and irreplaceable, which Dr Crisp will talk more
585 to – that's Appendix 1. Vulnerability and irreplaceability are recognised limits
586 to the ability to offset or compensate.

587
588 The inherent intention in that policy drafting, in particular the differentiation
589 drawn between offsetting to a nett gain outcome and compensation around the
590 species and ecosystems listed in Appendix 1, is that it requires a very high burden
591 of proof to reasonably demonstrate a nett gain offset is possible against any of
592 those species or ecosystems in Appendix 1, and it provides that very clear
593 direction that compensation is inappropriate for those same species and

594 ecosystems and that is based on what I showed you in the previous slide around
595 that uncertainty for biodiversity outcomes – and that level of uncertainty is just
596 inappropriate to apply to threatened vulnerable irreplaceable species and
597 ecosystems.

598
599 I would like to take this opportunity to reiterate that setting limits around
600 offsetting is not a pathway to allow unaddressed losses. It is setting a standard
601 of acceptability.

602
603 It's not uncommon to confuse biodiversity offsetting and biodiversity
604 compensation. I know I am being repetitive, but to reiterate that they are different
605 concepts – they generate different outcomes and they are not interchangeable.

606
607 These descriptions of those concepts are at my paragraphs 26 and 27 in my
608 evidence, but just to highlight that biodiversity offsetting requires a measurable
609 outcome like-for-like exchanges of biodiversity across type, amount and
610 condition, and only applies after avoidance, minimisation and remediation has
611 applied. So only applies to residual adverse effects. Whereas biodiversity
612 compensation does not require the same level of quantification of that outcome,
613 but is very clear that it is the last step in the application of effects management
614 hierarchy, and only after all avenues to achieve offset have been explored.

615
616 So, should you find that you cannot generate a suitable compensation outcome,
617 the next step would be to redesign; go back again and avoid those adverse effects
618 in the first instance. Or of course, there is the option of that activity is declined.

619
620 I think I have covered off most of these steps, but just to hammer the point home:
621 biodiversity compensation as a very last step has the most uncertain outcome for
622 biodiversity and that's because it does not require that stated quantified outcome
623 and it carries the most risk. Therefore it is appropriate that it's the last resort and
624 it's also appropriate that limits are placed around when it can apply.

625
626 The differentiation between biodiversity compensation offsetting is also
627 recognised in the National Policy Statements indigenous biodiversity, freshwater
628 and in the NRP.

629
630 My last slide I wanted to talk through the different between a no nett loss
631 outcome from a biodiversity offset and a nett gain outcome. What you can see
632 on your screen in front of you, if you look at that solid black horizontal line,
633 that's indicating a biodiversity value prior to impact from an activity.

634 [00.45.00]

635
636 The blue column is the predicted adverse effects that would occur on that
637 biodiversity element due to that activity; and then the brown bit of that column
638 is illustrating efforts to avoid. The grey showing then you do some more efforts
639 to minimise those impacts, to the steps taken to remediate adverse effects. Then
640 what you are left with is the residual adverse effects on that particular element
641 of biodiversity. That is what is subject to the biodiversity offset.

642
643 The green diagonal hashed column is showing the positive actions that are
644 undertaken to generate improvements in that biodiversity that's been impacted
645 and when that generates enough improvement, up to the point of the blue dashed
horizontal line, that is where you can show you have achieved a no nett loss.

646 This is all done with numerical models of course, but just trying to visualise that
647 process for you.

648
649 That no nett loss line is higher than the black horizontal line. We need to generate
650 more gain than what was lost because we account for time delay between impact,
651 losses and gains, and uncertainty. That's why there's that gap there.

652 Also, just to draw your attention, that no nett loss is at that neutral point. So no
653 loss, no gain, when you get back to that point. Then above that line is when we
654 are starting to generate nett gains in those biodiversity elements.

655
656 Only the biodiversity components, elements, species of vegetation communities
657 or whatever it may be, only those elements that have been measured and
658 accounted for are what we are achieving nett gains in. Anything else is left to
659 chance as to whether it is accounted for or not.

660
661 Then finally on the far right that lighter green column is just illustrating that
662 biodiversity compensation can produce some benefit. Sometimes it's quite a lot
663 of benefit, but it's unable to be quantified against a specific outcome – either a
664 no nett loss or a nett gain outcome, and carries that uncertainty.

665
666 That's me. I will pass over to Dr Crisp. Thank you.

667
668 Crisp: I only have a couple of slides. I was asked for my technical background about
669 how you would identify what were irreplaceable and vulnerable indigenous
670 biodiversity and there has been a lot of work completed in this space, in terms
671 of threat lists for both ecosystems and species, and these are really what I have
672 gone to, and they make sense. They're about for instance ecosystems that were
673 once quite prevalent across our region and now are just like little remnants left
674 and they are quite vulnerable to loss.

675
676 Similarly naturally uncommon ecosystems are just rare anyway, so every time
677 you chip away at those you really are making them even more rare; so they are
678 quite vulnerable and irreplaceable.

679
680 Then a lot of work is being done in the species space. I the picture I have here is
681 of a Bittern. There's fifty of those in our region. Around the country they are
682 declining at a terrible rate.

683
684 My last point is that there has been experts around the country that have used
685 criteria to decide how you would say which things were the most vulnerable or
686 at risk. This is published international criteria.

687
688 So there's some specificity there and also I did a lot of checking that these things
689 actually live in our region.

690
691 My only other slide is talking about the technical feasibility. Some things are
692 very hard for humans to recreate. Inland dunes you could plonk a whole lot of
693 [00.50.00] sand somewhere, but that won't create the ecosystem that was derived from
694 geological processes over time and have particular species that are associated
695 with them.

696

697 Old growth forests are quite complex systems hundreds of years old and just
698 planting a few trees doesn't replace those, especially if they are down to the last
699 remnants.
700 My example of seagrass meadows which are really important nursery areas for
701 fish, at the moment there definitely is no ability to recreate those; but scientists
702 do work on that. So I'm saying that in terms of using them as a biodiversity
703 offset when we still have, as Dr Maseyk was saying, or are quite unclear about
704 whether it would work, that shouldn't be used in those cases. But, both the
705 species that are threatened can change over time. People do this on a regular
706 basis. Have a look and see are they improving somewhere, are they in a better
707 state?
708
709 So this is why we are saying that many of this list, Appendix 1A, can change
710 over time.
711
712 Thank you.
713
714 Chair: Before we move to Ms Anderson we might see if we go to questions from the
715 reporting officers and the technical experts. That probably makes the most sense.
716 Thank you Commissioner Paine.
717
718 Paine: I have just one question for Dr Maseyk and that was, I am not quite
719 understanding the difference between the black line where we are now and no
720 nett loss, and why there is that gap.
721
722 Maseyk: The difference between those two is the black line indicates, theoretically
723 indicates that concept of the value of the biodiversity at the time that the impact
724 occurred. With offsetting generally we have the impact before we have the
725 offset, so there's a delay in time between the guaranteed losses and the uncertain
726 gains. The amount of biodiversity improvement that needs to occur to get you
727 back to the value that you were at the time of impact needs to be greater to allow
728 for that time lag, and also the uncertainty – because we're predicting the future,
729 so that always has some uncertainty. We know exactly what we have lost and
730 we are predicting what we are going to gain. That additional amount, which is
731 just conceptually illustrated of course in that visual, that explains that difference.
732
733 Paine: How do you measure that time?
734
735 Maseyk: That's an extremely good question. We use models basically, numerical models.
736 The inputs into those models are the values of the biodiversity that are lost due
737 to the development and the prediction of what those values will be after you've
738 applied your offset actions, whether they're pest control or whatever
739 conservation interventions are occurring to improve that biodiversity. There are
740 some mathematical formulas that take into account that time lag.
741
742 The concept of those offset models bring together aspects of biodiversity
743 ecosystem functions – so systematic conservation planning and time
744 discounting, like Lightbanks [54.08]. They bring those concepts together in a
745 numerical framework that account for uncertainty.
746
747 Paine: So there's recognised models for how you do these things. Is there one that all
748 ecologists agree on, or is there competing mechanisms to measure these things?

749 Maseyk: There are a couple of offset models in use in New Zealand at the moment. The
750 one most commonly used for stream offsets is the SEV model and that is
751 commonly used.
752 [00.55.00]
753 For terrestrial biodiversity there are a couple of models in use. Like any model
754 they should be subject to peer review and the use of them should be subject to
755 peer review, which is a standard part of putting together an offset design – is that
756 you would expect that the methods that you used to do that would be peer
757 reviewed.
758
759 Everyone agrees there's difference in opinion about some of those models.
760
761 Paine: I asked the question exactly because of that. A lot of the conversation seems to
762 be centred around not what the focus is but actually the efficacy of the models
763 each individual person is using.
764
765 Maseyk: Yes, and if I could add to that, it is an important conversation to be having
766 because models help us understand what it is that we are doing, but if they're
767 poorly designed models or they're poorly used models, then we get poor
768 outcomes. But, having used a model we can feel comfortable that there was some
769 rigor. It gives the impression that we did some maths and it's good.
770
771 That's a cautionary lesson. Like any model, good practice of model use is
772 required and that applies to offsetting as well. The assumptions of the model
773 need to be clear and the inputs need to be transparent. The level of how it deals
774 with uncertainty needs to be clear.
775
776 Around applying offsetting, in addition to all those principles is a set of good
777 practice and that includes how we use those models and the currencies that we
778 put into those models – the inputs.
779
780 Wratt: Could I just explore that. There is one other aspect of that, that I would like to
781 explore, which is there are some submitter comments about the ten percent gain,
782 and comments that the modelling required for a ten percent gain would be more
783 costly etc. than just demonstrating no nett loss. But, my understanding from what
784 you have presented in your evidence is that that is not actually the case. Whether
785 you're having to demonstrate no nett loss or a certain gain, that the modelling
786 essentially, the approach is the same and the work required is the same.
787
788 Maseyk: Yes, that's correct. To do that evaluation of whether your proposal hits no nett
789 loss, hits nett gain, or hits a ten percent, the process that you go through is the
790 same. You still need to use those numerical frameworks. You still need to show
791 your assumptions and your workings. You still need to account for time. You
792 still need to account for uncertainty.
793
794 Wratt: The rationale for that ten percent gain I think was twofold. One was just the state
795 of our biodiversity in the region, but the other was the uncertainty associated
796 with the whole offsetting process, that if you really do want to be confident that
797 you are protecting your biodiversity or improving your biodiversity then you
798 need to plan to take account of that uncertainty for a gain. That's in addition that
799 gap that Commissioner Paine was just asking you about.
800

801 Maseyk: Yes, that's correct. Certainly to get you into a safe space in the nett gain, if you
802 like, because of that level of uncertainty. As I showed you, if you just land on
803 no nett loss and we're correct in those assumptions, in those predictions, then
804 you're still in a neutral territory. We have done nothing better for biodiversity
805 with that outcome.
806
807 Also just to reiterate, only the bits of biodiversity that we put into those models
808 that we target, whether it's a vegetation community or particular species, only
809 those things are what we can claim we are getting those biodiversity outcomes
810 for, so we can't kind of say we measured some Bittern (we wouldn't because
811 we're not going to upset those things) but a particular vegetation community,
812 and therefore everything else is also at a nett gain outcome.
813
814 Wratt: Thank you for that. That's some clear explanations. Thanks very much. I do have
815 some other questions, but Commissioner Paine did you have... no.
816
817 [01.00.00] Just looking through my notes, I think for Ms Guest, in the introduction decision-
818 making principles topic, Ngā Hapū in particular I think requested that reflection
819 of the importance of the mauri was incorporated into the introduction comment
820 around the decision-making principles. You responded that you didn't think that
821 was necessary.
822
823 My question is, the NPS-IB does prioritise protecting the Māori, alongside all
824 the other points. It is the one that is prioritised. That's one question.
825
826 The other was that Wellington City Council suggested that people in
827 communities also needed to be incorporated into that comment. I guess the
828 specific question around those two points, but then perhaps the broader question
829 is how do you decide when you're making that sort of general comment what
830 parts of the NPS-IB do you repeat and what don't you? I guess that comes to the
831 broader question of how you deal with the cross-referencing.
832
833 Guest: A very good question. I guess the decision-making principles are all included;
834 so all the principles of mauri being given priority and caring for people and
835 communities are included in the definition for decision-making principles.
836 Nothing has been cut out.
837
838 I guess the question was really as an introduction how much of that needs to be
839 repeated. I have to admit that I flip-flopped and actually accepted both of those
840 submissions and drafted it. Then I read I think it was from Hutt City Council
841 saying "You've got too much detail in the introduction," and so where's the
842 trade-off?
843
844 I'm a little bit neutral to be honest. As I say, if the Panel were of a mind to put
845 those principles back in I would be totally fine with that. It was really a
846 judgement call of how much repetition do we put into the introduction where it's
847 just setting the scene. We do talk about the importance of people and
848 communities and the reciprocal relationship between biodiversity. If we added
849 in that mauri should have priority then it's... yeah. I could go back and put them
850 in. I would be totally fine with that. It was do we want two more sentences or
851 not? It's in the definition. Do we need to highlight it in an introductory
852 statement? I would be happy either way to be honest.

853
854 Wratt: My feeling would be that the mauri is probably the important one, because it is
855 prioritised in the decision-making principles in the NPS-IB. I would need to look
856 back at the detail in the introduction. If communities is mentioned elsewhere
857 then maybe not.
858
859 Guest: I would be happy to add in my reply.
860
861 Wratt: Have a bit more thought about that for your right of reply. Thank you.
862
863 I think this is a question for Mr Wyeth. In Policy 24(d) which is the one around
864 renewable energy regeneration and electricity transmission, you've made the
865 reference to the coastal policy statement taking precedence. I think it's 24(a) and
866 24(b) but you don't in 24(d).
867
868 My reading is that according to the coastal policy statement there are limits with
869 the carve-outs, I guess, for renewable energy generation and transmission, and
870 that you can't put effects management where there is significant indigenous
871 biodiversity.
872
873 Wyeth: The intent is that Policy 24(d) is not exempt from Policy 24(c) in relation to the
874 coastal environments and they need to be read together. So it's not just saying
875 that one prevails: the idea is that they are read together in the event of conflict.
876
877 Wratt: You make that point I think in 24(b) but you don't make the same point in 24(d).
878
879 Wyeth: The rationale for doing that in 24(b) is because of that explicit direction in the
880 terrestrial environment for the NPS-IB; whereas that sort of relationship is not
881 as clear cut with your electricity generation activities.
882
883 [01.05.00] I have just quickly read Meridian's response in their hearing statement and they
884 suggested that maybe just a statement that Policy 24(d) and 24(c) need to be read
885 together as an appropriate solution. I would support that.
886
887 Wratt: That responds to that question. I haven't actually had a chance to look at the
888 Meridian statement yet, seeing as their presentation is either tomorrow or the
889 day after.
890
891 Referring to that package of policies, I guess 24(a) through to (d), or 24 through,
892 you comment in your evidence, in your rebuttal evidence, that those policies
893 may need further consideration and refinement through the hearing. Is there
894 anything particular that you were thinking about when you made that statement?
895
896 Wyeth: I guess I was just acknowledging that there is a lot of detail in there. I guess it
897 came together in a relatively quick process, even though that option of including
898 those provisions in the RPS have been on the cards, I guess, for some time. So
899 not necessarily something that needs to be ironed out. I'll refer to Meridian
900 again: they have sort of questioned the need for Policy 24 now that those policies
901 are so standalone – policy (b), (c) and (d), and that's a potential option of maybe
902 just streamlining things. That's kind of what I was getting to more so than there
903 were any flaws or anything.
904

905 As I said, really what's in those policies is a straight replication of what's in
906 clause 3.10 and 3.11 of the NPS-IB and Policy 11 of the NZCPS, with
907 appropriate modifications just for terminology.
908

909 It was just maybe that there may be some drafting issues that could be improved
910 potentially.
911

912 Wratt: In your analysis and assessment you've come out on the side of saying that the
913 RPS should be a complete document; that when you're developing a plan or
914 putting in an application for consent that you don't have to go and refer to the
915 national policy statements, to the higher order documents, that everything is in
916 that regional policy statement; as opposed to what some of the submitters are
917 saying which is that's making the whole thing too long and too wordy, and you
918 just go to the appropriate higher order document.
919

920 Wyeth: I think that's the trade-off. Obviously it adds a lot of detail and replication but
921 you have got this considered document that gives effect to those higher order
922 provisions. Based on *King Salmon* then you don't up to those, you're
923 considering the RPS provisions.
924

925 From a planning perspective I think it's a lot more usable to read all those
926 provisions together alongside each other, rather than referring to multiple
927 documents. Obviously there is the risk that they seem to come out of date, and
928 you're referring to superseded NPSs, which could be quite messy if we use the
929 cross-reference approach.
930

931 There is certainly pros and cons associated with each approach, but where I have
932 landed I think is the most efficient approach.
933

934 Wratt: This may be a legal question for Ms McDonald, and I think I'm interpreting
935 correctly – when there is a change in the NPS subsequently, what I am reading
936 from both your evidence, is that what's in the RPS holds despite that change in
937 a higher level NPS until the RPS is changed by whatever process that might be.
938

939 Wyeth: Correct. That's my understanding. If we had reference to clause 3.10.11 of the
940 NPS-IB 2023 and that's repealed next year, those provisions would still stand.
941 The difficulty is you would be trying to find an updated NPS on MFE's website
942 which might not be particularly usable for RPS users. So you do get into an issue
943 there. But, certainly from a legal perspective the provisions need to change in
944 RPS itself, regardless of what happens to an NPS.

945 Wratt: Thank you. I will just look through my notes and see if there are any other
946 specific questions I had.
947

948 [01.10.00] Ms Guest, in Policy IE.3 the chapeaux for that: Policy IE.3 – maintaining,
949 enhancing and restoring indigenous ecosystem health non-regulatory. The
950 chapeaux then talks about or states that the regional policy statement “shall” do
951 something. Then in the explanation I think it notes that it gives effect Objective
952 16A... I think there are some methods it refers to somewhere that would actually
953 implement it.
954

955 I guess it just seems a bit circular to me to say, that the regional policy statement
956 shall do something. Does that mean that a subsequent regional policy statement

957 actually needs to be amended according to that, or is it really just saying that
958 Wellington Regional Council shall do the following things?
959

960 Guest: No. The intent is that the regional policy statement in the next iteration actually
961 brings in those priorities and targets, because it covers both regional and district
962 functions. It sets out which ecosystems or species might be... because it's
963 looking at even almost even a spatial planning sort of concept, and having a
964 strategic approach to restoration so that we are working together collectively on
965 restoration that's going to have the biggest bang for your buck, if you like, rather
966 than lots of little scattered projects which are great individually, but if we are
967 looking for a strategic way forward, then we are looking at the regional policy
968 statement setting that blueprint if you like. It's kind of pre-empting the Spatial
969 Planning Act in terms of looking at that spatial strategic approach.
970

971 I would need to change to the Regional Policy Statement to bring this in.
972

973 Wratt: So it is a subsequent change that that is directing in the regional policy
974 statement?
975

976 Guest: That's correct.
977

978 Wratt: I think this is probably my final question. It relates to Method 53 and the request
979 from Fish & Game that shouldn't apply just to non-indigenous habitat. I guess I
980 just wonder what the status is in the context of the requirement to look after the
981 habitat. I haven't used the right words that are in the statements, but look after
982 the habitat of trout and salmon subject to that not impacting indigenous
983 ecosystems or indigenous species.
984

985 But there are habitats of trout and salmon which I would think are not indigenous
986 habitats. I think where we've got hydro schemes and you've got trout and salmon
987 living in lakes and hydro canals down in Central Otago. You could have streams
988 going through farmland.
989

990 Are they indigenous ecosystems or are they not?
991

992 Guest: I think if they're part of a river network then they are. It's like people think of
993 drains; so where someone has dug a drain. It's generally part of a river network,
994 so actually technically it is part of an indigenous ecosystem.
995

996 Wratt: What would be a non? I guess another example would be where you showed the
997 example of wetlands being reconstructed. Do they become indigenous or not?
998

999 Guest: That's a good question. I guess our point is that with limited restoration funding
1000 that we would be wanting to put it towards out ecosystems. It could be that
1001 maybe there's constructed lakes would be a non indigenous ecosystem, but
1002 would we want to be putting our regional funding in those areas?
1003

1004 I think the decision here is that that's not really where our priorities would be in
1005 terms of supporting that.
1006

1007 I guess also these methods are all part of the indigenous ecosystem's topic, so
1008 that's really the main focus for this work.

1009 [01.15.00]
1010 Wratt: Thank you. I think that answers that question. I think that's probably enough for
1011 me now. Thank you.
1012
1013 Kara-France: I have a question for Ms Guest.
1014
1015 Thank you for your presentation, it was certainly heard and taken on-board. I
1016 appreciate the focus on the wording and the concepts acknowledged in your
1017 report.
1018
1019 It's more or less a statement. I would really like to highlight the importance of
1020 the national policy statements for indigenous biodiversity section 1.2, and that
1021 the decision-making principles 1, 2 and 3 from (a) to (g) are certainly highlighted
1022 in the introduction, and particularly prioritises the mauri value and wellbeing of
1023 indigenous biodiversity (a) and certainly moving onto (g) as well; that this
1024 highlighted clause in the introduction and throughout the provisions and policies
1025 acknowledges the comments not only coming from the community at large, but
1026 certainly mana whenua and tangata whenua.
1027
1028 I appreciate in Policy IE.2 giving effect to mana whenua and tangata whenua
1029 roles and values when managing indigenous biodiversity. I appreciate that's
1030 been acknowledged and highlighted.
1031
1032 Can you please answer the question in regards to your decision to remove
1033 [01.17.12] please?
1034
1035 Guest: The term was used because it was used in the exposure draft for the NPS-IB. We
1036 did have conversations with our iwi partners about whether it was appropriate to
1037 use it, and there was some concern raised by I think Rangitāne o Wairarapa,
1038 because it was actually part of their whakataukī and they were concerned it was
1039 being appropriated for a purpose that hadn't been developed.
1040
1041 But, because it had been used in the NPS exposure draft then they were... I'm
1042 not sure, 'happy' is not the right word, but they gave approval for us to use it in
1043 the draft.
1044
1045 Subsequently when the NPS-IB was gazetted that term was removed because of
1046 the iwi advisory group that was advising the development of that had asked for
1047 it to be removed and replaced with the decision-making principles, and therefore
1048 thought it was appropriate that we also changed the terminology.
1049
1050 The principles haven't changed. It's really just the definition that's used. Nothing
1051 has been lost. It's just removal or a change of terminology.
1052
1053 Kara-France: Thank you Ms Guest. That's really my questions in total. I really appreciate the
1054 presentations and also the statements of evidence presented to us. I certainly
1055 have read them through. I am drawn to comparison in terms of the monitoring
1056 processes from mana whenua and tangata whenua to your scientific models,
1057 which can be quite complicated if one is not used to it.
1058

1059 You've highlighted balance that mana whenua and tangata whenua and that
1060 holistic modelling approach is there in conversation, in terms of the partnerships
1061 regarding indigenous biodiversity.
1062

1063 I just want to applaud the Council on that. Certainly it is showing and
1064 highlighting a strength in partnership with mana whenua and tangata whenua.
1065

1066 Kia ora.
1067

1068 Chair: I have quite a few questions. I'm just wondering if it might be better to have the
1069 morning break now, because I'm conscious you've been there for a bit. We
1070 might just take a short break if that's okay, just ten minutes. The questions, I
1071 don't have as many for Ms Anderson, so hopefully we can catch-up some time
1072 in that period before lunch. Thank you.
1073 [01.20.00]
1074 [Break taken – 01.20.00]
1075

1076 Chair: Welcome back. Some of these questions are really just to make sure I understand
1077 the structure and flow of the provisions. I have a question about mapping and
1078 the interface of these provisions with SNAs.
1079

1080 Does the RPS currently identify any SNAs?
1081

1082 Guest: The RPS Policy 23 sets the criteria for what is a significant indigenous
1083 ecosystem or habitat. We don't use the term SNA. That's a term used in a
1084 terrestrial NPS, but it's the same thing.
1085

1086 The RPS directs that district plans and regional plans identify significant natural
1087 areas. Regional plans do it in the coastal environment, wetlands, rivers, lakes
1088 and the coastal marine area. District plans do it in the terrestrial environment.
1089 The criteria Policy 23 applied whatever environment you're in.
1090 Now that the NPS-IB has got its own set of criteria we have suggested bringing
1091 those in. We don't actually list the criteria in the RPS but we direct district and
1092 regional plans to apply the criteria and then identify those sites, and then put
1093 them into their district plans and Policy 24 directs that you also have policies to
1094 protect.
1095

1096 Does that answer?
1097

1098 Chair: It does. It just goes to this point about I think it's Porirua City Council make –
1099 how they have already identified a lot of SNA, or they have identified SNAs in
1100 their district. I think there's a concern that they would be required to do
1101 something different through these provisions.
1102

1103 Guest: There is certainly no intent for those district plans that already have identified
1104 SNAs that they would have to go and do it again. There's a clause in there that
1105 if a district planner already identifies SNA's the Council must have a look at the
1106 new criteria and assure themselves that they are covered. The criteria in the RPS
1107 and the NPS-IB are very similar. There's some very minor wording difference,
1108 but nothing much.
1109

1110 Christchurch and Wellington City Council have done an exercise to compare
1111 them. I think they have found there is maybe a couple of minor difference, but
1112 nothing significant.
1113

1114 Chair: In Policy 23 Ms Guest, para 2 there talks about the criteria. So these are the
1115 criteria that are taken from the NPS-IB, as in one of the appendices.
1116

1117 Guest: Policy 23, if you look at the black text, criteria (a) to (e) were in the operative
1118 RPS. They have been there since 2013. They are very standard criteria used
1119 across New Zealand and internationally for identifying significance.
1120

1121 The NPS-IB has got a set that are very similar. There's a couple of minor
1122 differences, which is why we have suggested that we split Policy 23 into two
1123 parts and the criteria and the NPS-IB applies in the terrestrial environment and
1124 the others continue to apply in the aquatic space.
1125

1126 Just for clarity too: those criteria I think have been around since the previous
1127 RPS as well, so they've been around for a long time.
1128

1129 Chair: There's no intention to have different levels of mapping? For example, what's
1130 required by the RPS and then what's in the district plans when they're giving
1131 effect to the NPS-IB provisions (I think it's 3.8 or 3.9) I guess I just want to
1132 understand if different levels of identification was the policy intent.
1133

1134 Guest: No. The intent originally was just to add a date and try and get the identification
1135 process and protection in district plans completed, given it had been required
1136 [01.25.00] really since 1991, since the Resource Management Act came out.
1137

1138 We are now just recognising that there is a minor difference in the NPS-IB and
1139 also a process that districts have to follow. To provide more clarity and
1140 efficiency we have just deferred to that process by splitting it in half, into two
1141 parts. I think that was suggested by Wellington City, just for clarity.
1142

1143 Chair: I think Ms Hunter for the Airport (and I think they are presenting later today)
1144 she says that it's not clear what impact these areas in Policy 23, that Policy 23
1145 requires to be identified. She says it's not clear what impact they will have on
1146 the identification of SNAs. But, if I'm hearing correctly, you're saying you can
1147 do a cross-check, but there's no intention to do a separate identification exercise.
1148

1149 Guest: The intent is it's more efficient. In the case of sites in the coastal marine area,
1150 the Regional Council has already done that assessment. There are already sites
1151 in the natural resources plan. Of course they need to be updated because of new
1152 information but the criteria are the same.
1153

1154 The Wellington City Council have done an identification of SNA's already, so
1155 that wouldn't change on this policy.
1156

1157 Chair: In Objective 16, which is the objective for the regional relating to areas with
1158 significant biodiversity values, you've recommended the words "other
1159 significant habitats of indigenous fauna" be added, and the processes that
1160 support those ecosystems and habitats.
1161

1162 That wording, I don't think it comes up again in any of the policies that give
1163 effect to that objective. Do you think that needs to be? I think 23 is the first
1164 example.
1165

1166 Guest: It should be in Policy 24. That's a good question. I will go back and have a look
1167 at that. Basically it's following the direction of s.6 of the RMA which has those
1168 other habitats. It was missing from the operative RPS. Yes, it should be added
1169 to Policy 24.
1170

1171 Chair: Feel free to reflect on that and come back in your reply if you think a change is
1172 needed there. I just noticed that I don't think it appeared anywhere in any of the
1173 implementing policies.
1174

1175 Staying on Objective 16, you have recommended ecosystems processes, which
1176 is undefined. I can't remember now the submitter that raised that – might have
1177 been Wairarapa Federated Farmers. But, ecosystem processes, those words...
1178 again it might just be a consistency check through the provisions, because
1179 sometimes "ecosystem functions" is referred to and I don't know if Dr Maseyk
1180 or Dr Crisp might also want to look at that – if there is a need to have that specific
1181 defined term "ecosystem function" rather than "ecosystem processes" through
1182 the provisions, just for consistency.
1183

1184 Policy 41 is actually another one with that other significant habitats that may be
1185 missing from there.
1186

1187 Guest: I think Policy 47 maybe.
1188

1189 Chair: Can I check I understand. When a policy is intended to apply only in the
1190 terrestrial environment and when it also is intended to apply in coastal.
1191

1192 [01.30.00] Policy IE.2A, which applies in the terrestrial environment, any comments on
1193 whether that needs to apply more broadly in the region?
1194

1195 Guest: I think it's a good point for us to check. It was brought in when we were bringing
1196 in the NSPIB policies. At this stage, I think you're looking back to Objective
1197 16A which is about maintaining and asking which policies give effect to that.
1198

1199 Chair: Yes.
1200

1201 Guest: At this stage it's probably only Policy IE.3, which is around the restoration, so
1202 we could look at that.
1203

1204 Chair: I started trying to map them.
1205

1206 Wyeth: I can make a comment on that. Policy IE.2A that's quite specific direction that's
1207 come from the NPS-IB around applying the effects management hierarchy when
1208 there are significant adverse effects outside of significant natural areas. That's
1209 clearly giving effect to a highly reaction provision in the NPS-IB that requires
1210 changes to RPS. There is no such supporting higher order direction outside the
1211 terrestrial environment to apply that approach. So I don't know if it's quite as
1212 easy as just applying that policy more broadly.
1213

1214 Chair: On that, I think again it might have been Porirua City Council raised a scope
1215 issue on this provision. They said this has come in through the s.42A and it
1216 wasn't part of the notified PC1; and basically should submitters have had more
1217 of an opportunity to know that this provision would be included?
1218
1219 I was looking to the very general language in s.30 and s.31 of the RMA, which
1220 possibly support this provision, but if it's seen as a direction from the NPS-IB
1221 do you think that could lead to a valid scope problem?
1222
1223 Wyeth: I think our recommendations for bringing it in is that clearly the maintenance of
1224 indigenous biodiversity was a matter just through Change 1. We've got some
1225 more specific direction that came in through the NPS-IB around how to achieve
1226 that in the terrestrial environment and we have scope within submissions saying
1227 seek to align with the NPS-IB as gazetted. So that was sort of the rationale for
1228 bringing it in, in relation to the terrestrial environment. I think there are some
1229 potential scope questions around bringing it into the RPS more broadly –
1230 notwithstanding that there is general direction around maintenance of
1231 indigenous biodiversity more generally, but this quite specific direction from the
1232 NPS-IB around applying the effects management hierarchy could be
1233 problematic to apply outside the terrestrial environment in my view.
1234
1235 Chair: I think we'll probably both give that some more thought.
1236 Actually, on the definition of effects management hierarchy, I had a question
1237 about that. The definition which you're proposing through your rebuttal
1238 evidence talks about managing adverse effects on significant indigenous
1239 biodiversity values. Isn't there a need for this to apply in areas outside the areas
1240 of significant values?
1241
1242 Wyeth: Where we are using the term 'effects management hierarchy' is specifically in
1243 relation to Policy 24B. It is only used specifically in relation to the terrestrial
1244 environment to give effect to the NPS-IB. We haven't used the language effects
1245 management hierarchy for example in relation to renewable energy, electricity
1246 generation, or in the coastal environment – so that's quite deliberate.
1247
1248 I think we may need to tidy up those words in terms of significant indigenous
1249 biodiversity values, so we are using the same language consistent with Policy
1250 24.
1251
1252 We are deliberately using it in relation to the terrestrial environment, as that
1253 applies, to give effect to the NPS-IB and using other language elsewhere.
1254 [01.35.00]
1255 Chair: I think really the main change I picked up from this effects management
1256 hierarchy compared to the specific one for renewable infrastructure and
1257 transmission is that you've got that sort of national benefit. So there are
1258 situations where even where compensation is not appropriate the activity itself
1259 might be enabled – where you've got that extra step there.
1260
1261 Wyeth: Yes, correct. The last step of the hierarchy is different. If compensation is not
1262 appropriate you have a balancing exercise and you avoid the activity of the
1263 significant adverse effects. If there's not significant adverse effects, there's more
1264 of a balancing exercise that benefits the activity and residual adverse effects.
1265 That's taken from the direction in the proposed NPSs.

1266
1267 Chair: I still can't quite work out why the effects management hierarchy wouldn't apply
1268 where you've got effects and biodiversity values, where those values are not
1269 significant, that's all. But, I see that you're saying that it applies really in relation
1270 to Policy 24B.
1271
1272 Wyeth: Although, I do need to check actually how it's been used in Hearing Stream 5. I
1273 am not sure if Kate has used the same terminology there. But, we would want to
1274 use it in specific ways in relation to those environments; so it's deliberately not
1275 used in relation to the coastal environment and deliberately not used in relation
1276 to renewable energy generation and transmission.
1277
1278 Chair: They're not carve-outs, but there's a consenting pathway provided for aggregate
1279 and coal, it applies there?
1280
1281 Wyeth: All those activities. If you go to 24B(2) that sets out all the activities where the
1282 effects management hierarchy applies, subject to other gateway tests relating to
1283 operational and functional need, and significant public benefit etc. Those all
1284 mirror what's in clause 3.10 and 3.11 of the NPS-IB. It's specifically using the
1285 effects management hierarchy in specific instances in that policy.
1286
1287 Wratt: If you go back to the definition then shouldn't the definition be broader and then
1288 where it's applied is actually what is specified in the policies? Effects
1289 management hierarchy is much broader than just... and it seems a definition that
1290 narrows it down is not actually helpful; whereas the policies specify where you
1291 can and can't apply it.
1292
1293 Chair: Actually, just while we are in 24B(2), I notice the words there that it applies to
1294 the following 'new' activities. Could you think about whether 'new' is actually
1295 needed there? This list goes on to talk about maintenance upgrade. Maybe it's a
1296 new maintenance project. I am just not sure if the word 'new' there is needed
1297 and if it might be confusing.
1298
1299 Wyeth: We can certainly give some further consideration to that. The word 'new' is used
1300 because that's the language used in clause 3.10 and 3.11 of the NPS-IB. It sets
1301 out another direction that relates to established activities, which is subject to a
1302 different effects management direction. But, certainly we can look at tidying up
1303 the wording to make the intent clear.
1304
1305 Chair: Established activities policy, is that one of the ones that you're recommending
1306 comes in in a future change?
1307
1308 Wyeth: No. I recommend that comes in for a new clause in relation to Policy 47. That's
1309 the consideration of policy that applies to significant biodiversity values.
1310
1311 Chair: Is it (k)?
1312
1313 Wyeth: Correct.
1314
1315 Chair: I might give Ms Guest and Mr Wyeth a bit of a break. Just a couple of technical
1316 questions Dr Maseyk and Dr Crisp, and whoever would like to answer these.
1317

1318 I think your evidence does cover it but I just wanted to ask – Wairarapa
1319 Federated Farmers say these comments about being out of date and an accurate
1320 [01.40.00] picture of the state of biodiversity in the region – so data that’s referred to as out
1321 of date and doesn’t show the increases in indigenous cover and that sort of thing.
1322 I just want to check: have you read the evidence of Mr Mattich I think? Have
1323 you read that? Is there anything in there that makes you think the information in
1324 the introduction or in the s.32 is out of date and needs updating?
1325

1326 Maseyk: I have read that evidence and no it doesn’t give me any cause for concern. I was
1327 co-author on the report that pulled all that data together. We put that together
1328 last year. Dr Crisp can talk the science team’s outputs in that space, but we have
1329 had a good look at that data and I think it's an accurate portrayal.
1330

1331 Certainly Ms Guests’ presentation at the start of this morning, of that regional
1332 overview, is indisputable. Thank you.

1333 Chair: Thank you. The column in Table 17, the final column, which relates to the
1334 coastal 24C, have you got a copy of that there? There aren’t that many references
1335 – there are a few things that are listed as endangered or critically endangered.
1336 Are these species and environments that have been identified in the coastal
1337 environment in the Wellington region?
1338

1339 Crisp: Yes, that’s correct. These are specifically the coastal species or ecosystems,
1340 because of the national coastal policy statement.
1341

1342 Chair: Policy 11 it's replicated isn't it, in Policy 24C. It's these areas, the indigenous
1343 tax [01.42.44] that are listed as threatened or at risk. It's those?
1344

1345 Crisp: Yes, correct.
1346

1347 Guest: Just maybe to add to that: these habitats and ecosystems are already listed in the
1348 Natural Resources Plan for the Wellington Region. This is the equivalent sort of
1349 SNA type of thing in the regional space – so the Regional Council has done that
1350 work, and identified them in the Natural Resources Plan. We have implemented
1351 the direction from Policy 24 in the RPS, so the Natural Resources Plan identifies
1352 those areas and it has protective policies and rules in place.
1353

1354 Chair: This is that point – that column says (and sorry if I’m simplifying it here) but
1355 there are limits to offsetting and compensation, where an activity may impact on
1356 one of those species or environments listed in that column.
1357

1358 This is the point some submitters have raised: that actually in their view Policy
1359 11 NZPCS says no offsetting compensation is allowed by the NZCPS which
1360 prevails in the coastal environment over the NPS-IB.
1361

1362 It's probably a mix of a legal question for the planners.
1363

1364 I guess we have some submitters that say no compensation offsetting is allowed
1365 if you’re dealing with a Policy 11 species or habitat. By including it in that
1366 column, in Table 17, does that align with your position as well? Are we saying
1367 that there’s no compensation offsetting allowed?
1368

1369 Wyeth: For those species and ecosystems that meet the criteria in Policy 11A of the
1370 [01.45.00] NZCPS, we're saying offsetting is completely off the cards. That
1371 sits down here in the effects management hierarchy; whereas the NZCPS
1372 provides very clear direction. It's been subject to a lot of case law that those
1373 "avoid policies" mean avoid. It doesn't allow you to have residual adverse
1374 effects on one of those species and then apply offsetting. That's my
1375 understanding of the case law. There isn't much case law on that point, but that's
1376 my understanding of the direction in the NZCPS.
1377

1378 Wratt: Looking at Policy B in the NZCPS, which is not those specified species and taxa
1379 under A, it says "avoid significant adverse effects and avoid, remedy or mitigate
1380 other adverse effects of activities on," for example indigenous vegetation. I read
1381 that, even though it doesn't specifically mention effects management hierarchy
1382 – effects management hierarchy application in clause B would actually be okay
1383 because that's a method of remedying or mitigating. Is that correct?
1384

1385 Maseyk: No. Mitigation is different than offsetting, but you are heading towards what has
1386 evolved into that fuller effects management hierarchy. The avoid remedy in the
1387 Coastal Policy Statement was a precursor if you like of where we have got to
1388 now, with the full... but mitigation is not offsetting.
1389

1390 Wratt: So effectively you can't offset anywhere in the coastal marine area, is that what
1391 is being said? I would have thought with the progression from the NZCPS to
1392 how the effects management hierarchy is applied more generally... I guess my
1393 question is what does 'mitigate' mean? Does it incorporate offsetting?
1394

1395 Maseyk: I will let the policy experts respond to the policy question, but I can respond to
1396 the question around mitigation. Mitigation means to minimise and reduce to
1397 lessen, to make an impact less. Offsetting is not mitigation. It does not reduce
1398 the impact. The residual impact is still there. So the process that we go through
1399 to offset something does not make that impact any smaller, it just generates a
1400 sufficient improvement in in biodiversity to balance or exceed that residual loss.
1401

1402 Wratt: Essentially it offsets and it doesn't mitigate.
1403

1404 Maseyk: Exactly right. They are very different things.
1405

1406 Wratt: Understood. That's a useful clarification for someone who is not that deeply
1407 imbedded in all these policy statements.
1408

1409 Guest: Just to clarify that too, the mitigation is the package of avoid, minimise and
1410 remedy those three steps in mitigation – so then offset, compensate...
1411

1412 Maseyk: [01.48.24]
1413

1414 Guest: Sorry, maybe it's a combination of minimise and remedy.
1415

1416 Chair: I think that's the difference. It's the Policy 11A areas. I think Council had
1417 referred to is it the Matiti case, but there hasn't really been any definitive
1418 decisions on this point about Policy 11A areas.
1419

1420 Wyeth: I will just add as well, and I imagine Wellington Airport will talk to this this
1421 afternoon, but Policy 38 in the Natural Resources Plan provides a framework for
1422 emerging effects on species and habitats that meet the 11B criteria. It does
1423 provide for offsetting and compensation in certain circumstances. There is kind
1424 of that pathway in the coastal environment already. It is a bit of grey area of 11B
1425 and what that provides for.
1426

1427 Chair: I will just keep going. I think I had some other questions on that table, but I'll
1428 come back. I've lost my line of thought there a bit.
1429

1430 Still around Policy 24, I think in her hearing statement Ms Foster, who's here
1431 and is presenting later in the week, says that this policy now doesn't really offer
1432 and specific policy direction because it really cross-refers to 24B, C, D.
1433 [01.50.30]

1434 I guess it's one of those sort of signposting type things/provisions, but is that
1435 right? Do you think it actually is needed, or is what it doing captured now by
1436 24B, C and D?
1437

1438 Wyeth: I would agree that it's necessity is now questionable, apart from providing that
1439 sort of signposting function, which is not technically needed. Certainly give
1440 some further consideration to the need for that policy in the light of the new
1441 policies that have been recommended.
1442

1443 Chair: If it stays, if you're recommending it stays, should Policy 24C say that the
1444 renewable electricity and transmission activities provision is not subject to
1445 Policy 24C as well as 24A and B. Or, this this issue where we have got 24C is
1446 of course about coastal isn't it – this is the interface between the NZCPS and...
1447

1448 Wyeth: I think because we've got that clear direction in clause 1.3.3 and that terrestrial
1449 environment, [01.51.48] activities are excluded from the NPS-IB, we don't have
1450 that same direction in relation to the coastal environment. I think it's more that
1451 Policy 24D and Police 24C need to be read together, rather than Policy D being
1452 exempt from Policy 24C. There could be a statement added to that effect to
1453 clarify that. But, I don't think there's any statutory basis to exclude renewable
1454 electricity generations and transmission activities from Policy 24C.
1455

1456 Chair: That's where I think the *Port Otago* Supreme Court decision ends up going as
1457 well; saying you need to try to keep reading them together, and the RPS is
1458 actually a good place to try to reconcile.
1459

1460 My question was, is that what this provision is trying to do? It's saying we've
1461 observed that there's a potential conflict and we are reconciling it by saying that
1462 Policy 24D 'trumps' is not the right word but prevails of 24C. But, that's not
1463 what you are saying. You're saying keep reading them together.
1464

1465 Wyeth: Keep reading them together. I don't think until those amendments take effect
1466 that we have the statutory basis to do that, and make Policy 24B prevail. I think
1467 the instance of there being conflict between those policies for those activities
1468 should be relatively minor. This is what I see as the most effective option in the
1469 interim period, given that uncertain national policy context.
1470

1471 Chair: That is a point that some people have raised because it is direction and draft NPS
1472 isn't it.
1473

1474 Wyeth: I guess looking at the alternative options, and I've stayed silent on it in Policy
1475 24, then you inadvertently have a more stringent sort of approach for renewable
1476 electricity generation activities than you do for other specified infrastructure that
1477 have that pathway in the NPS-IB. The clear intent from government was to still
1478 maintain those specified infrastructure pathways, but have something that's
1479 more enabling for renewable electricity generation. It only differs in a couple of
1480 key aspects and that's what I have tried to reflect in the drafting for Policy 24.
1481

1482 Chair: You're left with a gap, and I guess some of the options are the RPS tries to fill
1483 the gap, the RPS is silent and then the gap is filled further down at a consenting
1484 stage, or at another planning stage. You resort back to Part 2. There's various
1485 options isn't there.
1486

1487 Wyeth: As I've said, I think this is the most effective option in light of those uncertainties
1488 and within that context, and the intent of those amendments to the NPS which
1489 the government has signalled they're going to progress as a priority; is that they
1490 would be directly inserted into the RPSs and regional plans and take precedence.
1491 [01.55.00]
1492

1493 I am envisaging this as an interim policy framework for those activities, until
1494 that occurs.
1495

1496 Chair: Thank you. Complex.
1497

1498 Wyeth: Very complex.
1499

1500 Chair: In 24B I notice that in (1)(e) it refers to any part of their life. This might be a
1501 question for our technical experts again. Is there any elsewhere 'lifecycle' is
1502 used? Does that matter – lifecycle. Policy 3.10 in the NPS-IB I think uses
1503 lifecycle.
1504

1505 Wyeth: I could probably provide a quick answer to that. That's an omission. It should
1506 be mirroring the language in the NPS-IB.
1507

1508 Chair: Maybe a consistency check throughout would be good. Thanks.
1509

1510 Policy 47, I really want to come back to all of these in Hearing Stream 7 and I
1511 think that is on the radar. This is these consideration policies, the ones that
1512 remain and the ones that fall away when the plans given effect to the associated
1513 policy.
1514

1515 The explanation to this provision, Policy 47, says that the provisions in 24 and
1516 24A must be considered until those policies are given effect to in regional and
1517 district plans.
1518

1519 Are you able to talk me through that a bit more? Say if Policy 24 and 24A are
1520 implemented. What happens to Policy 47 at that point?
1521

1522 Wyeth: These consideration policies and the sunset clauses I think are problematic for a
1523 whole range of reasons. Obviously we haven't proposed any changes to that
1524 sunset clause as part of Change 1. In reality I don't think it's every going to be
1525 clear-cut that policies are being fully given effect to in the region and then Policy
1526 47 would somehow fall away. From a planning perspective you would just be
1527 looking at those policies together. It would be clear cut sometimes when Policy
1528 24 has been given effect to and others it won't.
1529
1530 Personally, or in my opinion, that sunset clause is problematic. I would support
1531 its removal.
1532
1533 Guest: Concur.
1534
1535 Chair: I think we probably do need to look at across this week, but appreciate that we
1536 have got this provision and the operative RPS and it's not within the scope of
1537 PC1. So realise that we're not going to get it completely consistent through the
1538 whole RPS.
1539
1540 I was trying to work through a scenario in my head about how it would work in
1541 practice and I was struggling.
1542
1543 Still in 47, Ms Guest, can I check the numbering here? It goes (h)(i) and then
1544 sub(ii). You don't need to respond now but I think something has happened with
1545 the numbering there. It could be that (ii) needs to be (j).
1546 [02.00.00]
1547 I just noticed Ms Guest in your rebuttal, I don't think you addressed a query
1548 from Ms Pauline Whitney for Transpower at para 8.12. It might be something
1549 that they're presenting later in the week. There was a question or a comment
1550 about welcoming advice from the reporting officer regarding the genesis of
1551 Policy 47(j). I think that as addressed in your rebuttal.
1552
1553 Policy 61, can I check. There's some text in here that talks about maintaining
1554 indigenous biodiversity and receiving bodies. It might be in the explanation
1555 actually – yes, in the explanation. Just a minor point, but I think that should also
1556 refer to the terrestrial environment. Just minor. Just to check that the explanation
1557 reflects the provisions.
1558
1559 It might be actually some of these we put in writing in the Minute.
1560
1561 Dr Maseyk, I think in your presentation there were some comments about like
1562 for like when you were talking about offsetting, and I think you referred to target
1563 biodiversity. Can I just check that I understand target biodiversity? In the
1564 definition of offsetting, I think it talks about type, amount, condition. How does
1565 that relate to target biodiversity?
1566
1567 Maseyk: That's a very good question. When I was talking to those slides, when I am
1568 talking about the target biodiversity, it was my shorthand for referring to any
1569 type of biodiversity that was impacted by a proposed activity; so whether that's
1570 a vegetation community, particular species or structure of a habitat. There is
1571 multiple ways in which we describe biodiversity. The point I was making is that
1572 when we are doing those offset calculations it's only those things that we

1573 specifically describe and measure and account for in those offset models that are
1574 able to be claimed to be offset to an only loss or nett gain.
1575
1576 When I'm talking about target biodiversity I am not talking about the definition
1577 of biodiversity offsetting. I am just saying which of those things we are putting
1578 into models.
1579
1580 I wouldn't go looking for the word 'target' in definitions of biodiversity. When
1581 they are talking about type, amount and condition, that is referencing more detail
1582 of those biodiversity elements that have been impacted.
1583
1584 Chair: I think I have two more questions only.
1585
1586 The Porirua City Council their view is that Policy IE.3 or possibly IE.2, it says
1587 it's non-regulatory but it's actually regulatory because it is providing direction.
1588 [02.05.00]
1589 I think they read it as providing direction to territorial authorities.
1590
1591 Does that matter how it's labelled?
1592
1593 Guest: My understanding of labelling something in regulatory policy is it directs a
1594 regulatory response; so it directs a use of rules, which is not the intent of Policy
1595 IE.3 or my reading of it. As I explained before it's directing a strategic approach
1596 to restoration. It's more of a conservation management framework. It's not
1597 directing that there's a regulatory approach for restore and enhance. Council
1598 gave a very clear directive in drafting this, that that was not what they wanted to
1599 see. That's not what I think we have written.
1600
1601 Chair: And, that flows from Objective 16A where you're recommending the words
1602 "where appropriate"?
1603
1604 Guest: Yes.
1605
1606 Chair: Would flow from there.
1607
1608 Aquatic compensation and offsetting, which is in the appendices in the NPS-FM
1609 are being picked up in these provisions. I am not sure exactly why, but there
1610 were some submitters that had an issue with that.
1611
1612 On a principle based point I wouldn't think it would matter if you're dealing
1613 with picking up those principles for aquatic compensation and offsetting here,
1614 but I think the point might have been that it applies more broadly in the NPS-
1615 FM.
1616
1617 Any comment on that?
1618
1619 Wyeth: I think the concern there was that they just wanted Policy 24A to focus on
1620 terrestrial environment rather than offsetting compensation elsewhere. We have
1621 referenced those terms and the principles, both from an efficiency perspective
1622 and because that policy is broader than just a terrestrial environment. That also
1623 interplays with Policy 11 and 11A I think. It was addressing Hearing Stream 5
1624 which referred to aquatic offsetting and compensation. You sort of got your

1625 effects management policy for natural, wetlands and river extent and value there,
1626 and they'll be cross-referenced when referring to the principles for offsetting the
1627 compensation. You will be reading that together with Policy 24A which will set
1628 out limits to when aquatic offsetting and compensation is appropriate.

1629
1630 That's why we took out that clause (c) in policy 24C and instead relied on those
1631 freshwater specific policies. The idea is that Policy 24A would be read alongside
1632 those.

1633
1634 Kara-France: I have a question to Ms Guest and Mr Wyeth. In your report in s.254 you
1635 highlight a response to Mr Angler's submission in regards to the RMA s.6(e).
1636 My question is in the area of wāhi tapu and significant values to mana whenua
1637 and tangata whenua. The question is, are you aware that there are wetlands
1638 within the Wellington Region which are historical burial grounds for Māori?

1639
1640 Guest: Yes I am. Criteria in Policy 23E relates to tangata whenua, mana whenua values.
1641 As I mentioned before, the Wellington Regional Council has given effect to that
1642 policy and has worked with mana whenua and tangata whenua partners. They
1643 actually have identified a number of those sites already in the natural resources
1644 claim. You will see a wetland for example identified and then it may have wāhi
1645 tapu or another value that's associated with the biodiversity.

1646
1647 Kara-France: Excellent. Thank you.
1648
1649 So therefore what you have just explained, for that also will mapping be
1650 involved, or has been involved for confidential files for example, for sensitivity?

1651 [02.10.00]
1652 Guest: They're called Schedule C sites under the Natural Resources Plan. They are
1653 mapped. There is a bunch of policies, rules and methods around how to manage
1654 those areas, when someone wants to do something.

1655
1656 Kara-France: That's good to hear. Thank you.
1657
1658 Another question is in regards to (and it's probably the ecologists may respond
1659 to this) and I acknowledge that you have mentioned a number of methods here
1660 regarding kaitiaki, indigenous biodiversity and monitoring programme; the
1661 relationship that Māori have with the environment etc. etc. is relationship
1662 through whakapapa. Therefore an indigenous species within a particular area
1663 they are a family through whakapapa and they only specifically come from that
1664 area. These mātauranga Māori are they going to be highlighted and
1665 acknowledged through your regional biodiversity strategy as well?

1666
1667 Guest: Yes, that's correct. Greater Wellington is working on a programme called Māori
1668 Tūhono which is in partnership with our iwi partners. That's around applying
1669 mātauranga as well as western science approaches to identify areas and special
1670 areas. She probably picked up on Method IE.4, the kaitiaki biodiversity
1671 monitoring programme and that will be working in partnership on that.

1672
1673 Kara-France: That's great. Thank you. No more questions. Thank you very much.

1674 Wratt: Just one further question for, I think, Ms Guest. It relates to Policy IE.2.

1675

1676 Hutt City Council made a comment that relates to giving effect to mana whenua
1677 roles and values when managing indigenous biodiversity – so not just significant
1678 biodiversity. Their comment was “virtually every form of development has some
1679 impact on indigenous biodiversity. The application of mātauranga Māori would
1680 require expert cultural advice, and I consider it unreasonable to expect this, given
1681 the number of proposals that would be captured by this policy direction. I do not
1682 consider this adequate justification in the s.32AA evaluation for this level of
1683 regulation.”

1684
1685 Your response was that you agree with Mr McDonald, that requiring expert
1686 cultural advice for virtually every form of development would be unreasonable
1687 for both iwi and developers. But, considering that determining the parameters
1688 for implementing Policy IE.2 would need to be negotiated with mana whenua,
1689 tangata whenua, given effect to decision-making principles in particular that are
1690 partnership in negotiating such matters.”

1691
1692 So we’ve sort of got I guess two extremes. One is the Hutt City Council saying
1693 should just be for significant and indigenous biodiversity. The policy as it reads
1694 at the moment is essentially it's for all indigenous biodiversity. I can certainly
1695 understand where he is coming from. In my experience often iwi are stretched.
1696 You can try to get responses for something that they’re not particularly bothered
1697 about and you just don’t get a response, and processes do get really delayed.

1698
1699 I guess my question is, is there any opportunity to put any additional guidance
1700 in this policy in terms of how it's applied.

1701
1702 Guest: I do agree with Mr McDonald. Yes it would be inappropriate to require that sort
1703 of negotiation with every application. But, I also don’t think the RPS can
1704 actually give that sort of direction that he’s looking.

1705
1706 Greater Wellington itself has developed protocols with our iwi partners about
1707 when they might want to see and application for a resource consent and when
1708 they might not. We have certain types of application that they always want to
1709 see; or different iwi want to see different sorts of applications. If they’re
1710 activities on a Schedule C site which we have mapped, etc. that automatically
1711 goes there. If they’re in another area which is a Schedule B site then they get
1712 sent the applications and they can choose whether or not to respond, but it's not
1713 a definite requirement.

1714
1715 Those sort of relationships and protocols need to be developed by the District
1716 Council with their iwi themselves. I don’t think the RPS can set those parameters
1717 because it differs across the iwi as to when they want to get involved. I don’t
1718 think the RPS should be directing that.

1719 [02.15.00]

1720 Wratt: I can appreciate that. Is there then a need or requirement on territorial authorities,
1721 councils or whatever to develop that? I guess it just seems to me at the moment
1722 it's left really open. For a developer that can be a real constraint. The Regional
1723 Council approach seems very sensible.

1724
1725 Guest: There’s a requirement under the Resource Management Act to recognise and
1726 provide for Māori relationships. Is it a matter of national importance? Are you

1727 asking whether the regional policy statement should direct that district councils
1728 develop protocols?
1729
1730 Wratt: Yes.
1731
1732 Guest: Maybe. Maybe we can think about that one.
1733
1734 Kara-France: In trailing on from the kaupapa that we have just spoken about, the Council have
1735 existing co-partnership arrangements in their treaty settlement obligations, is
1736 that correct?
1737
1738 Guest: That's correct, yes.
1739
1740 Kara-France: Kia ora. Thank you.
1741
1742 Chair: We are definitely over time, but Mr Wyeth when you come back to us with your
1743 reply, just think about whether reconstruction of areas should come in either as
1744 part of the definition of restoration or somehow incorporate it into the policy on
1745 restoration. I just notice that it's referred to in the NPS-IB 3.21 – this is Policy
1746 IE.3. I just think it might be needed there.
1747
1748 I had a question about the decision-making principles but I will put that in
1749 writing. I know some submitters were saying that these are ahead of time,
1750 because that engagement hasn't happened. I think Ms Guest or Mr Wyeth, you
1751 had talked about how an appropriate place for that level of engagement is
1752 actually at the district plan making stage – I think that was one of your responses
1753 to that.
1754
1755 Wyeth: And through the future RPS change to give effect to the NPS-IB in full. Those
1756 decision-making principles can't be fully given effect to now, wasn't a cause for
1757 delaying [02.17.32] provisions.
1758
1759 Chair: Ms Anderson, just in case you did have other things you wanted to do after the
1760 lunch break, are you happy to deliver your submissions now? I don't have a lot
1761 of questions for you if that's of any help.
1762
1763 Anderson: Sure. I was actually going to ask did you want me to go through the key
1764 highlights, or did you just want to go straight to questions? I don't have anything
1765 in addition to what was in the written submissions per se, so whatever suits you
1766 best timing wise.
1767
1768 Chair: I'm fine with questions, but I will just check with the other Commissioners.
1769 Would you like Ms Anderson to provide a summary of her submissions, or are
1770 you happy for questions.
1771 Kara-France; I don't have any questions, thank you, it's very clear.
1772
1773 Paine: It's quite clear.
1774
1775 Chair: I've just got a few. Firstly, thank you very much to the Reporting Officers, Dr
1776 Maseyk and Dr Crisp. There will be additional things that we will put out in a
1777 Minute that you might want to respond to in writing.
1778

1779 A complex and very interesting topic. There's clearly not enough time.
1780
1781 Ms Anderson thank you to you and your team for the legal submissions.
1782
1783 Do you think there's any restriction in the statutory framework that would
1784 prevent any of the proposed Change 1 provisions being more stringent than the
1785 requirements of the NPS-IB?
1786
1787 Anderson: Now you're testing my knowledge of the NPS-IB. I think the short answer is no.
1788 I can't see anything that prevents that.
1789
1790 Chair: Someone I guess might try to say you haven't given effect to it, the direction, if
1791 you're doing something that's much more restrictive.
1792 [02.20.05]
1793 Anderson: You've still got to apply the plan change test don't you, in terms of whether it's
1794 the most appropriate. You may find that some of the s.30 and s.6 directions end
1795 up in that space, and particularly for those issues where you're talking about
1796 there's a gap. Obviously you're not constrained by the NPS anyway. But, the
1797 tests still apply, so if there's a reason to be more stringent I don't see that as an
1798 issue, a legal issue.
1799
1800 Chair: On that gap point Ms Cook, Wellington City Council says in her view that there
1801 is no scope to include the proposed Policy 24D that the officers are supporting.
1802 Because providing for renewable energy generation, electricity transmission
1803 matters, they're excluded from the NPS-IB. Here the officers are providing for
1804 them. We have heard about how the officer's view is that that fits in the statutory
1805 framework because you get that direction from the NPSET, perhaps the
1806 NPSREG.
1807
1808 Do you think Ms Cook has got a valid point that there is a scope problem with
1809 including Policy 24D here?
1810
1811 Anderson: I can provide some more detail on that, but at a general level, because you've
1812 got the two issues of scope, the scope of the change, I think as Mr Wyeth said
1813 earlier, it's pretty broad in that indigenous ecosystems was on the table basically
1814 in its entirety in that plan change, and how or what exceptions there might be to
1815 it, I think fits within that scope of the plan change.
1816
1817 As I understood it, there was a submission asking for that recognition for
1818 renewable energy. I just don't see the scope of submission issue either. I don't
1819 see that as a scope problem.
1820 Chair: I think it was quite a narrow point Ms Cook was taking, saying if you're giving
1821 effect to the NPS-IB the NPS-IB is basically silent. Those aren't here words, but
1822 it doesn't deal with renewable infrastructure or transmission. So now bringing it
1823 in is stretching the scope of the plan change.
1824
1825 Anderson: It's not how I had read the scope of the plan change, but I can comment on that
1826 further in reply if that's helpful, if you want a definitive answer on that.
1827
1828 Chair: Is it your rebuttal – there's one set of your submissions that does talk about.
1829

1830 Anderson: I'd probably just need to go back to the s.32 Report though to answer that
1831 specifically. We've gone through scope in many iterations in the various
1832 submissions. It was the rebuttal submissions, but not on the specific point that
1833 you're talking about.
1834
1835 I can do that.
1836
1837 Chair: That would be great thank you. I appreciate I think all of your submissions
1838 address that scope point. Appreciate the thoroughness there.
1839
1840 Porirua City Council's lawyers also raised the scope around Policy IE.2A. This
1841 is the one that they say there was no s.32 analysis because it was introduced
1842 through the s.42A Report.
1843
1844 Anderson: I have to say, I didn't disagree with anything that Mr Wyeth said on that scope
1845 issue when you were talking to him about it. It didn't raise a particular concern
1846 for me.
1847
1848 Chair: We talked about s.31 but then there is still the second limb. Has someone
1849 basically raised that? Is there relief seeking that through submissions?
1850 [02.25.00]
1851 Is it Mr Wyeth, or Ms Guest, I think in your 42A you looked specifically at is
1852 there scope to include Policy IE.2A and I think you're satisfied that there is.
1853
1854 Wyeth: I guess there are two scope issues. Obviously the maintenance of indigenous
1855 biodiversity is clearly within scope of Change 1 submissions seeking to align
1856 with the NPS-IB. As gazetted it's clearly within the scope of submissions and
1857 that's what we are recommending for a new Policy IE.2.
1858
1859 I think there is scope to recommend that new policy.
1860
1861 Chair: Thank you. Just another question: this is on the objective of the actual NPS-IB
1862 which has those very last sub-clauses about providing for social economic
1863 cultural wellbeing of people in communities.
1864
1865 Ms Anderson I think it's this thing about reading provisions across different
1866 chapters together. The officers are not supporting that these biodiversity
1867 provisions reference that limb of the objective, because they say there's
1868 elsewhere in the RPS. Let's just take minerals for example, where activities are
1869 enabled, so you don't need to specifically refer to that providing for economic
1870 etc. wellbeing.
1871
1872 The other view though is that in the face of quite directive reasonably strong
1873 provisions that require protection, unless you have some recognition of the need
1874 for providing for economic wellbeing is there enough balance in the provision
1875 suite?
1876
1877 I don't know. I think Mr Wyeth you have thought about that in your report. You
1878 think that they read together okay?
1879
1880 Wyeth: I think there's sort of two levels for operating here. There's the RPS objective
1881 level, which are all to be read together and you've got your enabling ones around

1882 infrastructure and mineral extraction, and then protection of biodiversity on the
1883 other hand.
1884
1885 At the next level I think that the key way that NPS balancing objective around
1886 protecting but doing so in a way that provides for the wellbeing of people in
1887 communities, it's given effect to through those specific clauses that avoids
1888 certain adverse effects, but also have exemptions for certain activities. In my
1889 view that's providing for that kind of balancing approach. I think we are giving
1890 effect to that objective through providing through those pathways.
1891
1892 Chair: I think your submissions were really helpful. I understand better now the giving
1893 effect to NPSs that are gazetted post notification of PC1. Thank you. We heard
1894 quite a bit about that issue in I think the freshwater hearing stream.
1895
1896 I understand you looked at those submissions from Winstone Aggregates and
1897 others. You've provided your views. I think that was all that I wanted to ask.
1898
1899 Anything else?
1900
1901 Anderson: The only thing that might be worth commenting on, because you mentioned the
1902 Motiti case, I haven't provided it to you because it is 504 pages long and it's
1903 literally a solid set of provisions, but there was an interim and final decision that
1904 preceded that, and I did go back to check those, as to whether there was any
1905 commentary on whether you can apply off-setting to Policy 11A. Because
1906 ultimately the provisions did in a limited extent in that case. But, there is no
1907 commentary from the court.
1908 [02.30.00]
1909 I am never that keen on using that as a basis for an answer when there's no
1910 analysis. So I accept there are at least one set of provisions out there where
1911 offsetting go applied. You will see the reasoning set out in the legal submissions,
1912 which aligns with what Dr Maseyk was referring to in terms of mitigation and
1913 offsetting being two different things – one in a legal sense is a positive effect.
1914 Mitigation of adverse effects is something different.
1915
1916 Chair: I've got quite a bit of reassurance from the legal submissions of Forest & Bird
1917 and DoC as well. They're so far reasonably comfortable with the approach.
1918 Actually, on that positive effects, I was wondering – it's to do with whether
1919 offsetting is available in these very sensitive areas. Someone raises the point that
1920 s.104, and I think it's actually Wellington City Council...
1921
1922 Anderson: The new bit that was introduced several years ago that recognises offsetting?
1923
1924 Chair: Yes, that that shouldn't limit. Because that is there you can't have an RPS that
1925 then says actually no there's limitations to offsetting.
1926
1927 Do you know if there's been any case law?
1928
1929 Anderson: That provision in the RMA is about when the applicant offers up a positive effect
1930 by way of offsetting. It's a slightly different box because they've volunteered it,
1931 rather than it being imposed on you. I think that accepts also that it's a positive
1932 effect that can be quite hard to require.
1933

1934 I don't think it plays into this issue about can you apply offsetting to Policy 11
1935 sites. The NZPCS is an older document and offsetting has probably become a
1936 lot more common discussion in recent years. The Environment Court possibly
1937 is also not so clear about offsetting and mitigation necessarily being two
1938 different things, because it hasn't been really an issue specifically. But, that High
1939 Court case referred to in the rebuttal submissions does make it clear where the
1940 court still sits on that issue.

1941

1942 Chair: That's a good point – s.104 is quite different from what we are looking at here.

1943

1944 Just a very, very final point and it does relate to scope again, I understand there
1945 is scope from the Winstones submission to include the consenting pathways for
1946 aggregate. This is in Policy 24B – the consenting pathways for all of the other
1947 activities, which come from the NPS-FM, technically there may not be scope
1948 from submissions. I guess it would be quite unusual to just have one consenting
1949 pathway and not the suite of them from the national instrument.

1950

1951 Wyeth: In the s.42 there's broad scope around Policy 24 not providing or being overly
1952 restrictive for infrastructure and seeking exemptions in some of those;
1953 specifically seeking that the exemptions in clause 11 of the NPS apply to those
1954 activities. So it wasn't just one submitter – there was quite a few expressing
1955 views on this.

1956

1957 So I do think there is scope to bring in those.

1958

1959 Chair: I think that's the end of the session for now. We are well and truly into the
1960 afternoon. We'll have a lunch break. Do you think it will be okay to start at
1961 1.15pm. Our submitters will be waiting so we might just have to have a very
1962 short lunch break. I do apologise for that. We'll be back here at 1.00pm.

1963

1964 [Lunch break taken – 02.34.35]

1965

1966 Chair: Kia ora. We are resuming again the lunch break. This is Day One of Hearing
1967 Stream Six, Indigenous Ecosystems. Nau mai haere mai ki te kaupapa o te rā.

1968

1969 **Wellington International Airport**

1970

1971 Welcome Miss Dewar and Miss Hunter.

1972

1973 Dewar: Thank you.

1974 [02.35.00]

1975 Chair: You're comfortable with who we are? You don't need us to do introductions
1976 again?

1977

1978 Dewar: No that's all good. Obviously I am here on behalf of Wellington International
1979 Airport. I am here with Clare Hunter. I have filed some very brief legal
1980 submissions and Clare has filed evidence, so we are here to answer any questions
1981 you may have.

1982

1983 Obviously we have reviewed the rebuttal evidence. That has been filed by the
1984 Council and the legal submissions.

1985

1986 I don't know how you want us to do this. Do you want Clare to respond to the
1987 rebuttal, or you just simply want to ask questions of us.
1988

1989 Chair: I think if you could take us to the points where you are still seeking relief; where
1990 you don't agree with the provisions in the officer's rebuttal evidence and seek
1991 further changes, that would be helpful.
1992

1993 Dewar: I will leave that or Clare to do. I will follow up with any legal comments at the
1994 end if that's alright with you.
1995

1996 Chair: That sounds good, thank you.
1997

1998 Hunter: Good afternoon everybody.
1999

2000 The issues really remain in my view in terms of Policy 24, 24A and Appendix
2001 1A in particular. The issue is that it establishes quite a high bar in terms of the
2002 coastal environment and coastal marine area, whereby if there are any of those
2003 listed habitats which may be affected by a certain development, for example a
2004 seawall construction, upgrade or maintenance, then the direction within
2005 Appendix 1A and then by default the Policy is that adverse effects need to be
2006 absolutely avoided. It is very clear there shall not be any offsetting or
2007 compensation for such effects on such habitats. That's the primary issue.
2008

2009 The relief Wellington Airport is still seeking is deletion of those provisions
2010 essentially, rather than revision.
2011

2012 Dewar: In short, the Airport's position hasn't really changed with the rebuttal evidence.
2013 It still remains very concerned that rather than the rebuttal evidence making
2014 things less complicated than they already are in terms of the plan change, it's
2015 actually made it even more complicated and wordy.
2016

2017 I note in the s.42 officer's report they said the Appendix was well mediated and
2018 went through a long process through the NPSs process I assume she was talking
2019 about. I was involved with that process and that Appendix was hard-fought, but
2020 the reason that it was accepted was because of the statutory and I suppose policy
2021 and objective framework that sat behind that. It provided an appropriate pathway
2022 for infrastructure projects.
2023

2024 But, what has happened with the Appendix now as it been placed in the RPS I
2025 that it closes off those consenting pathways. I can give you an example. Clare
2026 has just mentioned it. In the Appendix it talks about assemblages of kelp.
2027 [02.40.00]

2028 That's throughout the region and that's where it would not be appropriate to
2029 have offsetting. There is kelp around the airport and there is assemblages. There
2030 is even some nasty kelp in amongst the nice kelp, and [02.40.22] is there. There
2031 wouldn't be able to be any offsetting or touching of that item, even though it
2032 would be good for the environment.
2033

2034 You will be aware from the evidence that the airport is in the process of having
2035 to amend the seawall. It will require work in that area where there is kelp. It's
2036 not just holding up and supporting the airport, it is supporting the road for the

2037 Council, and it is supporting a great deal of infrastructure such as sewerage and
2038 stormwater for the district.
2039
2040 So it is really important that these policies that are being put forward for you to
2041 make a decision on are appropriate.
2042
2043 Like it or not, the airport does exist in the coastal environment. Can't help that
2044 now it's there. It does have to be maintained. It does have to do works in the
2045 coastal marine area and in the coastal environment.
2046
2047 I just think that it's just gone too far. There is insufficient policy and objective
2048 direction with the remainder of the RPS to assist I might add when you try to
2049 put it all together and put these provisions back into the main document; which
2050 I might add is quite difficult in the way that the plan change has been put in that
2051 document. It's very hard to see the big picture.
2052
2053 Chair: Are you happy to take questions now? Is there anything further you would like
2054 to address Ms Hunter?
2055
2056 Hunter: Maybe just in terms of the s.42A Report writer has taken a very black and white
2057 approach in terms of the NZCPS and Policy 11 being a strict avoidance, which
2058 I accept that it is. But, I think if you look at that Ports of Otago Supreme Court
2059 case that was specific to ports. I accept and acknowledge that there is a specific
2060 Port policy in the NZCPS that they were talking about there. However, when I
2061 reviewed the NZCPS there are a number of provisions – Policy 6 and Policy 10
2062 – that also talk about regionally and nationally significant infrastructure, and
2063 also recognise that they might have a functional or operational requirement to
2064 locate in the coastal marine area or environment.
2065
2066 There should be an appropriate pathway for those types of activities in that
2067 location as well.
2068
2069 So I think there is more grey than simply saying Policy 11 with regard to
2070 regionally significant infrastructure as a strict avoidance.
2071
2072 Dewar: Just on that, obviously in the Supreme Court decision it did hold that giving
2073 effect to those directive policies in regional plans that you should seek to
2074 reconcile that conflict. I think it's so very easy for a court to say isn't it, but not
2075 so flash for those who have to draft for that. We have all seen the contorted way
2076 that those decisions have panned out of the years. It's a very difficult area. I
2077 suppose for my two-bobs worth, it just means that if you can't reconcile it please
2078 don't preclude development without giving it the ability to actually be tested in
2079 circumstances, where it's very difficult to see all the conflicts, and the court
2080 hasn't actually dealt with those particular provisions.
2081
2082 Obviously we have dealt with salmon farms and we have now dealt with ports.
2083 There's obviously other provisions for reclamations. There's the provisions that
2084 Clare has just set out as well, which haven't dealt with the court. So you're not
2085 quite sure how a court might deal with that conflict, other than that it would
2086 probably have to.
2087

2088 [02.45.00] So what we are asking is not to preclude that and to make sure that the words as
2089 they don't preclude a consenting pathway with the use of language – such strong
2090 directive language in these provisions.
2091
2092 It might be that the planners get together and undertake some expert
2093 conferencing on this matter. I accept that it's complex and difficult, but maybe
2094 that is one way forward.
2095
2096 Obviously the Supreme Court decision is relatively new. It's not mentioned in
2097 the Council's rebuttal submissions for instance and maybe there needs to be a
2098 bit more care taken, given the importance of it. It's not just the airport that's
2099 going to be affected by this it's also Waka Kotahi and the Port and they are
2100 significant infrastructure for the district and region.
2101
2102 Chair: There has been quite a few amendments that the officers are recommending in
2103 the rebuttal evidence. I have read your evidence statement Ms Hunter, but would
2104 quite like to look at the latest suite of provisions that the officers support. If we
2105 start with Objective 16 and the inclusion there of protecting where appropriate
2106 – sorry, protected and where appropriate enhanced and restored. Are there still
2107 further changes that you think are needed to that objective?
2108
2109 Hunter: I am reasonably comfortable with that objective, with the redrafting yes. It's
2110 more around Policy 24 that I still have concerns.
2111
2112 Chair: The direction for plan making?
2113
2114 Hunter: Yes.
2115
2116 Dewar: When you say the direction for plan making, where's that reference?
2117
2118 Chair: Sorry, we were just looking at Policy 24.
2119
2120 Hunter: Having said that, I'm reasonably comfortable with that one, aside from the fact
2121 that it specifically references Policy 11 to be the only way to manage adverse
2122 effects on indigenous biodiversity in a coastal environment.
2123
2124 That's coupled with the 24A and Appendix 1A.
2125
2126 Chair: Can I just check you've got the rebuttal provisions there Ms Hunter.
2127
2128 Hunter: No I don't sorry.
2129
2130 Chair: You sort of need five screens at one time.
2131
2132 Dewar: I think the difficulty is that now refers to 24C rather than the New Zealand
2133 Coastal Policy Statement. Because of the way 24C is drafted then you'll sort of
2134 killing it by another slash of the sword really – page 6.
2135
2136 Hunter: It's essentially replicating Policy 11 in the NZCPS. It doesn't change at all.
2137
2138 Chair: Maybe we'll come back to 24. In 24B, and I know this is terrestrial, but I'm
2139 finding it helpful for me to just step through things in a structured manner. I

2140 know 24B is terrestrial but there is a pathway there for specified infrastructure.
2141 I understand the Port's infrastructure comes within that definition.

2142 [02.50.00]
2143 Hunter: The airport yes.
2144

2145 Chair: I know it's the coastal environment that your evidence particularly focuses on.
2146

2147 Hunter: Yes, and I think in terms of the s.42A response to my evidence is that if there is
2148 a conflict between the NCCPS and the NPS-IB that the NZCPS prevails, which
2149 I acknowledge there's that note in there. But as I say, I don't think the NZCPS
2150 is as black and white as it's been portrayed in their response. I think it's more
2151 grey in terms of infrastructure.
2152

2153 Wratt: Can you just elaborate on how you might address that? You've said the
2154 Council's approach is black and white, but your approach also seems a bit black
2155 and white, where you've just said you want to see Appendix 1A deleted and I
2156 think Policy 24 deleted was it? The Appendix doesn't just apply to the coastal
2157 marine area, which I'm understanding is what you are concerned about, and I
2158 understand your concerns, but the challenge is how do you actually address that
2159 and be consistent with what is in the NZCPS, which is relatively clear. It talks
2160 about avoid, remedy or mitigate indigenous vegetation. It talks about avoiding
2161 adverse effects of activities on indigenous taxa.
2162

2163 In my read there's not a lot of flexibility in the NZCPS. It would be helpful if
2164 you could go a little further than just saying you want those deleted.
2165

2166 Hunter: I guess that's an extreme relief but without having technical evidence to support
2167 whether or not those listed environments or habitats are as significant in terms
2168 of Policy 11A I can't really comment on that. They seem to me to be quite broad-
2169 brush, for example mixed kelp assemblages which could be throughout the
2170 coastal environment. I don't know if they have been tested as well as they should
2171 have been. I guess my response to that is that they should be removed until that
2172 sufficient testing has been completed.
2173

2174 Wratt: So what you're now identifying is some specific assemblages which are
2175 identified in that Appendix 1A in Table 17.
2176

2177 Hunter: Also it says mixed kelp assemblages. That's an easy example to point to. That
2178 seems quite broad. My understanding is, especially with the work that
2179 Wellington Airport are undertaking with looking at upgrading of that seawall,
2180 that there will be those types of assemblages in that environment; so an
2181 avoidance is just not practicable because there are safety and operational
2182 concerns if the seawall is not sufficiently upgraded.
2183

2184 I think when you look at the NZCPS there are pathways for those kind of
2185 activities. It talks about operational and functional needs of infrastructure. I talks
2186 about in some situations infrastructure being appropriate in the coastal
2187 environment.
2188

2189 So yes, there are those clear directives, but that has to be considered against
2190 those more requirements to acknowledge that in some situations infrastructure
2191 needs to be located there.

2192
2193 Dewar: It might be that it's fine to have the level of detail and have those things in the
2194 policy, but provided that there is another policy or additional words in the policy,
2195 as Ms Hunter as suggested, to make it clear that there might be circumstance, in
2196 which case you would go through a process to decide whether or not a project
2197 was supportable or not, or appropriate.
2198
2199 We're not asking for an easy road. We are just asking that there is an appropriate
2200 consenting pathway. Because the difficulty with the Supreme Court decision is,
2201 as you say, quite rightly 'avoid means avoid'. That's what *King Salmon* said.
2202 But, unfortunately *Port Otago* has said that's not right. So it will depend on the
2203 circumstances as to when you have to totally avoid.
2204
2205 As I said earlier, the provisions that we have talked to you about in the New
2206 Zealand Coastal Policy Statement haven't been tested by the courts yet. I think
2207 that makes your job really, really hard in terms of wording.
2208
2209 So what we are suggesting is that you at least have a pathway where it enables
2210 a project to be assessed appropriately in terms of the higher order documents, as
2211 well as the RPS; and at the moment that's not there. It's just you will be avoid,
2212 you cannot mitigate, you can't offset because there's some kelp here.
2213 [02.55.00]
2214 That just can't be right.
2215
2216 Chair: We heard from Dr Maseyk earlier. That column, that far right column in Table
2217 17 basically incorporates what is in the threat classification system lists as
2218 threatened or at risk species – so Policy 11A habitats and species.
2219
2220 Has there been an issue? So if the kelp that's in the Wellington coastal
2221 environment near the airport's infrastructure is captured, or is threatened or at
2222 risk, wouldn't have come up as an issue for you in terms of maintaining existing
2223 – the seawall? Has it been an issue? Basically it's nothing new is what I
2224 understand. This is reflecting what's in the NZCPS already.
2225
2226 Hunter: In terms of a consenting pathway, there is a consenting pathway under the
2227 regional plan and that acknowledges that offsetting compensation can be
2228 provided for. Having said that, minor maintenance activity is permitted under
2229 the plans, but it's more extensive upgrading that I understand needs to be
2230 undertaken now, and that will make the footprint a bit wider, so therefore it
2231 probably triggers a consenting requirement that they have been through
2232 otherwise before is my understanding. Amanda might be able to elaborate on
2233 that.
2234
2235 Dewar: It hasn't been triggered yet. Previously the Airport has had to undertake that kind
2236 of maintenance, because it is a replacement, so it goes a bit beyond maintenance.
2237 They have to maintain it all the time, but this time it is a replacement and that is
2238 a more significant engineering project.
2239
2240 Chair: So it's it possible that even if say the kelp, or even if there isn't anything that
2241 triggers 11A, that we could be looking at an 11B situation – so significant
2242 adverse effects in an area that doesn't have significant biodiversity values? Are
2243 you saying that there's still an unreasonable consenting barrier there?

2244
2245 Hunter: Essentially yes. If there is no ability to offset and compensate I think. If you look
2246 at the seawall itself, it's probably created some sort of habitat for marine
2247 invertebrates or whatever it might be, algae or those sorts of things. I can't
2248 comment on that. I haven't seen any evidence of that. But, just for an example,
2249 they might have existed within the existing environment there and they may
2250 need to be removed. But, Wellington Airport is prepared to offset or compensate
2251 by recreating that habitat within the new seawall or somewhere else.
2252
2253 Chair: The provisions elsewhere in the RPS that enable the Airport's infrastructure and
2254 upgrade activities, replacement activities, we heard this morning when I asked
2255 the officers that question about other provisions in the RPS that they would need
2256 to be read together; so you would advocate for that, at that consenting stage.
2257
2258 But, you're still concerned about the strict language in 24C?
2259
2260 Hunter: Yes and coupled with Appendix 1A there's no pathway for offsetting or
2261 compensation if these types of effects are triggered.
2262
2263 Wratt: I think you mentioned earlier that there were other clauses within the NZCPS.
2264 Can you identify what those are that would enable?
2265
2266 Chair: Policy 6 and other ones...
2267
2268 Hunter: I'll just double check.
2269
2270 Dewar: There's Objective 6 which is an overriding objective and then you move into...
2271
2272 [03.00.00]
2273 Wratt: Objective 6 – enabling people in communities to be provided with social... blah-
2274 blah.
2275
2276 Dewar: You can see there it says, “functionally some uses and developments can only
2277 be located on the coast or in the coastal marine area.”
2278
2279 Hunter: Policy 6 is activities in the coastal environment which recognises the provision
2280 of infrastructure, important to social, economic and cultural wellbeing.”
2281
2282 Then I will just take you to a couple more.
2283
2284 Policy 10 in terms of reclamation. So there is a presumption that reclamation is
2285 associated with infrastructure, that there is a pathway there for them, under
2286 Policy 10.
2287
2288 Then a Policy about hazard protection as well – Policy 27. Recognising that hard
2289 protection structures may be the only practical means to protect existing
2290 infrastructure of national or regional importance to sustain the potential of built
2291 physical resources to meet the reasonably foreseeable needs of future
2292 generations.
2293

2294 Wratt: This may be a question for the reporting officers – whether there is a way of
2295 trying to soften the application of Appendix 1A through some reference to that
2296 other objective and policies within the NZCPS.
2297

2298 Hunter. I am not sure if it's helpful or not but the Port of Otago Supreme Court Decision,
2299 it's quite short actually, which is quite useful. Paragraph 87 sets out it's similar
2300 in the terms of the Port of Otago's activities were trying to have a pathway
2301 through some of the provisions in the Otago RPS. At paragraph 87 of that
2302 decision it sets out a suggested approach. I feel like it's similar here. It talks about
2303 if any of the policies under Objective 3.2 which is specific to the Otago Regional
2304 Policy Statement cannot be implemented while providing for the safe and
2305 efficient operation of *Port Otago* activities, and then apply a different policy
2306 which relates to national and regionally significant infrastructure and prevails in
2307 certain circumstances over another one, which is probably biodiversity focused.
2308

2309 Then it sets out if the operation or development of Port of Otago may cause
2310 adverse effects on the values that contribute to the significant outstanding
2311 character identified in another policy or to surf breaks as being nationally
2312 significant *Port Otago* may apply for a resource consent for the operationally
2313 development where the work is required for the safe and efficient operation of
2314 its Port; and it establishes that the adverse effects from the operational
2315 development are the minimum necessary in order to achieve the efficient and
2316 safe operation of its port.
2317

2318 I do see similarities in that case to the situation we have got here.
2319

2320 Wratt: Thank you for that. Can I ask the reporting officers at this stage for any comment
2321 on that, or is it something that you would need to give some reflection to?
2322

2323 Wyeth: It's obviously a complex exercise. I am aware of that *Port Otago* decision that
2324 said you undertake a structural analysis when there are conflicts between higher
2325 order documents that can't be resolved. I guess I tend to do that in some way in
2326 reference to case law around what a void means etc. and that clear direction that
2327 NZCPS prevails where there's conflict with NPS-IB.
2328

2329 We can certainly give more consideration to this issue with reference to some of
2330 those NZCPS policies just referenced.
2331

2332 Chair: To me, the context is so critical here and that is also what the Supreme Court as
2333 well as in *Port Otago* and *King Salmon* of course said. It would have been really
2334 helpful to know if the activities the airport might want to carry out would trigger
2335 these limitations on offsetting compensation. It's obviously a more straight-
2336 forward analysis if they don't trigger those provisions, but if we assume that
2337 they do, it's that multi-million dollar question isn't it – it's weighing up the avoid
2338 policy with the ability to maintain and upgrade existing.
2339 [03.05.05]

2340 Just as you will say this, we'll have Doc, Forest & Bird and others that say Policy
2341 11 has to prevail.
2342

2343 I might possibly regret this, but if it's possible to come back to us, if you've got
2344 any more information perhaps from the team at the Airport about whether the

2345 environment in which you would want to be doing this work does trigger that
2346 threat classification – if it will affect those habitat and species.
2347

2348 Dewar: Happy to do that. As I say, I haven't got any instructions but I'm sure I would
2349 get them, all the planners to an expert conference on this issue given its
2350 importance.
2351

2352 I just think it is complex and it does need more thought. Unfortunately, and you
2353 may or may not know, we are all suffering from over-exposure to statutory plan
2354 processes at the moment. There's a limited amount of time that our clients can
2355 give to these projects.
2356

2357 Chair: Policy 47 is interesting Ms Dewar and Ms Hunter if you've got it hand there.
2358 We were talking this morning – this is a policy that once Policy 24, 24A are
2359 implemented then Policy 47 at the moment it sort of ceases to apply.
2360

2361 I was just looking at Policy 47 and it does have a pathway – Policy 47G I think,
2362 minimising or remedying adverse effects on indigenous biodiversity values
2363 where avoiding is not practicably achievable. Probably when you read the whole
2364 thing, that's probably not talking about the areas of significant values, because I
2365 think that's deal with perhaps further down.
2366

2367 Actually, we will ask the officers to look at that, because I'm not sure at the
2368 moment if it's possible – that if this is a transitional provision that falls away, it
2369 possibly provides for a consenting pathway that isn't actually provided for in 24.
2370

2371 My Wyeth have you got any...
2372

2373 Wyeth: I think you're correct with that sort of direction. Clause G has been somewhat
2374 superseded by the more specific effect management hierarchies in those new
2375 policies recommended. We'll give some further thought to that, but at face value
2376 I think G would be deleted.
2377

2378 Chair: So you would have to get in there quick and do the consents before 24 was
2379 implemented, when potentially more restrictive provisions come in.
2380

2381 The officers will look at that.
2382

2383 I might be wrong but I think the airport is possibly the only infrastructure
2384 provider that remains concerned, I think, because we've renewables and
2385 transmission now having a specific pathway through national direction, or at
2386 least draft direction, and we've got I think Waka Kotahi is reasonably
2387 comfortable probably because it's more terrestrial rather than the coastal
2388 environment. I think we'll hear from them later, but I think they're reasonably
2389 comfortable.
2390

2391 You may be the only infrastructure providers who remain concerned. We have
2392 heard what you have had to say.
2393

2394 Ms Hunter, you didn't have any speaking notes?
2395

2396 Hunter: No, I've just spoken to you.

2397
2398 Chair: I guess I'm interested in knowing if you have any updated provisions based on
2399 the rebuttal version, or if you're still seeking going back to the relief in your
2400 original evidence.

2401 [03.10.00]
2402 Hunter: I think if there as a pathway specific for nationally and regionally significant
2403 infrastructure, like there has been for the renewables, then that would provide
2404 me with some further comfort. So we could think about that, but whether or not
2405 that would be acceptable.
2406

2407 Chair: That has literally been taken from the draft NPS-REG. I don't know if 'notified'
2408 is the word but it was published last year. That tries to reconcile the NZCPS
2409 direction enabling that infrastructure. It's sort of taken from there.
2410

2411 Hunter: Essentially that is the pathway that Wellington Airport is certainly seeking
2412 though. I acknowledge there isn't an NPS to support that. In terms of the layers
2413 of national direction, it's pretty clear that other infrastructure like the airport is
2414 also recognised in terms of being able to have a pathway specifically through
2415 some of those conflicts.
2416

2417 Dewar: If the airport is still the last person standing in terms of an infrastructure
2418 provider, maybe there is an ability, and that is the way to avoid the conflict
2419 between these competing provisions in the New Zealand Coastal Policy
2420 Statement. We can give some thought to that.
2421

2422 Hunter: There could be a specific airport report type provision in the RPS. I'm not sure
2423 why the port are not involved in this, I would have thought they would be
2424 concerned; but we've got acknowledge here in Wellington there is an airport
2425 within the coastal environment.
2426

2427 Wratt: I would have thought that there should be concerns from some of the others. I'm
2428 not sure about Wellington, but certainly where I'm from in Nelson, there's Waka
2429 Kotahi and there are coastal sections of highway that are in need of significant,
2430 and as with climate change will be in need of further significant work. The port
2431 as you mention is another one.
2432

2433 Hunter: The Council is because of the road that goes around. The airport is Council
2434 infrastructure.
2435

2436 Wratt: Some of those roads would be Council rather than Waka Kotahi.
2437

2438 Chair: If the kelp is not threatened I think there's a bit more hope. If you would like to
2439 look into that and come back to us. Ms Hunter, as well, if you would like to have
2440 another look at these provisions in light of the rebuttal version and if there are
2441 some more provisions and amendments. If you would like to submit those and
2442 then the officers can consider those when they are preparing their reply.
2443

2444 Hunter: Yes, will do.
2445

2446 Dewar: We'll respond. We just won't be able to do it in the next few days as we've got
2447 another Council hearing.
2448

2449 Chair: No problem. I think the reply is not due for... actually we haven't set the
2450 timeframe for that. It won't be within the next two weeks, it will be after that.

2451 Dewar: Thank you. All good.

2452

2453 Kara-France: I have a question for you please Ms Hunter.

2454

2455 Just in regards to the seawall activity and the indigenous species impacted on
2456 that seawall activity, when conducting that particular activity, do you as a
2457 business operation, the Wellington International Airport, also conduct cultural
2458 impact assessments and cultural value assessments attached to that resource
2459 consent, seawall activity.

2460

2461 Hunter: Yes certainly. I'm not here on behalf of the Airport, I'm independent, but yes
2462 they are certainly looking at getting all of those studies completed as part of a
2463 consenting process.

2464

2465 Kara-France: That will include a conversation with the Department of Conservation in regards
2466 to the conservation of those indigenous species?

2467

2468 Hunter: The Department will be a stakeholder as well, yes, in terms of consultation.

2469

2470 Kara-France: Can I just bring your attention back to the RMA, sections 5, 6, 7 and 8, and in
2471 particular s.6(e) and the relationship of tangata whenua to the ancestral lands,
2472 which include indigenous species.

2473 [03.15.00]

2474 I noted in your report you highlighted the lizards. The mokomoko or lizards as
2475 you have highlighted in your report, they whakapapa historically from your
2476 location, previous to your lifecycle and life as an airport activity; so it's really
2477 important to take into account the future generations and also the wellbeing of
2478 that – not only the mauri, the intrinsic value and wellbeing of indigenous
2479 biodiversity, but also for our future generations. Just would like to leave that
2480 statement with you.

2481

2482 Dewar: Thank you. I can assure you that Wellington Airport is in contact with its iwi
2483 partners and there are lots of discussions going on about a number of matters. It
2484 does take that very seriously.

2485

2486 Kara-France: I'm aware of cases around the country where in partnership with mana whenua
2487 and tangata whenua and the Conservation Department concerning these
2488 conservation indigenous species, and the relocation of mokomoko for example,
2489 those strategies have taken place. So there are mitigation strategies available,
2490 and just not a complete ignorance of those indigenous species, who actually
2491 whakapapa and come from that specific area from where the International
2492 Airport is. Just highlighting those particular issues to you.

2493

2494 Kia ora. Thank you for your submission.

2495

2496 Chair: Unless there was anything else you would like to raise with us?

2497

2498 Dewar: All good, thank you very much for your time.

2499

2500 Chair: We have our last submitter for the day, Ngā Hapū o Ōtaki. Kia ora.

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Ngā Hapū o Ōtaki

Welcome. Welcome Ms McCormick. Welcome to the indigenous ecosystems hearing. Nice to see you all again. Kia ora. Kia ora Ms Hapeta and Dr Spinks.

Good to see you all. Welcome to Hearing Stream Six – Indigenous Ecosystems. Would you like us to do some intros again, or are you happy that we know who we are? I think you've all presented at least a few times. Good to see you again. The floor is yours. Over to you. We have a good half an hour with you.

McCormick: Ka pai. Tēnā koutou katoa. Ngā mihi o te ahiahi. Good afternoon Madam Chair, Commissioners and Staff Officers. Tēnā kōrua, ko Whaea Denise rāua ko Dr Aroha Spinks. Ko Melanie McCormick tēnei. He uri tēnei nō Te Ātiawa ki Whakaropa [03.18.52]. I am supporting Ngā Hapū o Ōtaki in regard to Regional Policy Statement Change 1.

Also online is Whaea Denise and Dr Aroha Spinks from Ngā Hapū.

I will hand over to you Whaea Denise and Dr Spinks. Did you want to introduce yourselves briefly, or shall I just continue with my whakaaro?

Hapeta: Tēnā koutou kei te poari, tēnā koe Mel i tō mihi. Koutou kei te tēpu tēnei e mihi ana ki a koutou. Āe, te āhua nei kei mōhio mātou ki a koutou. This will be our third or fourth presentation. Ina, tēnā koe. I think we are happy to move on Madam Chair. I will let Aroha introduce herself and we are keen to move on. You've had a busy day.

Spinks: Kia ora. Similar to Aunty and Whaea now. Lovely to support everyone. Kia ora.

McCormick: Kia ora kōrua I'll continue.

[03.20.00] I would like to acknowledge the other iwi and hapū of Te Whanganui-a-Tara and recognise their mātauranga and whakaaro presented in their submissions on Change 1.

I would also like to acknowledge the reporting officer Ms Guest and other representatives from the Greater Wellington Regional Council for the time and effort that has gone into preparing the hearing this week.

Thank for the opportunity to provide our oral submission to Hearing Stream Six.

As noted, my written whakaaro is taken as read, so I will move on highlight the key points.

Although our support is evident in my speaking notes I think it is important to speak into the reasons for our support for the proposed amendments to indigenous ecosystem provisions.

The proposed amendments recognise and provide for our world view and our mātauranga in regard to te taiao and indigenous ecosystems. Also the amendments recognise and provide for our role as partners under Te Tiriti, our values and relationship with te taiao including the inherited responsibility of

2553 kaitiakitanga and the inclusion in decision-making processes, as well as they
2554 provide greater protection, restoration and enhancement of the region's
2555 biodiversity.

2556
2557 As mana whenua, Ngā Hapū have observed the depletion of our taonga species
2558 throughout our rohe, and the wider Wellington rohe. This includes across all
2559 ecosystems and habitats, in our pae maunga, inland waterways, the ngahere and
2560 coastal landscapes.

2561
2562 In particular, the loss of taonga species and mahinga kai has impacted our
2563 traditional ways of being, our customary practices and the transmission of
2564 intergenerational knowledge of our mātauranga.

2565
2566 This loss not only represents a physical loss of species, that is the extent and
2567 richness in the natural environment, but also the impacts on our hauora, our taha
2568 wairua, taha hinengaro, taha tinana, taha whānau and of course our connection
2569 with the whenua.

2570
2571 That is to say, the significant reduction of indigenous biodiversity has a
2572 significant adverse impact on mana whenua.

2573
2574 Moving onto the chapter introduction, in my opinion value is lost by not
2575 including mauri and reference to the decision-making principles for indigenous
2576 biodiversity.

2577
2578 Additionally Ms Guest's paraphrasing of the decision-making principles does
2579 not include the directive to prioritise the mauri intrinsic value and wellbeing of
2580 indigenous biodiversity.

2581
2582 Mauri recognises the value of indigenous biodiversity in and of itself. I think it
2583 is helpful to draw reference to at least conceptually the idea of personhood in
2584 regard to mauri.

2585
2586 Indigenous biodiversity is valued because it has mauri. Secondary then is mana
2587 whenua and community wellbeing that is enhanced and sustained through
2588 biodiversity. We are protecting or should be protecting it because of its own
2589 inherent value, not only for the ecosystem services it provides for us which we
2590 are critically dependent upon.

2591
2592 With respect, as it is drafted, in my view the Chapter Introduction does not
2593 similarly capture this capture this concept of mauri and therefore does not
2594 adequately capture the full value of indigenous biodiversity.

2595
2596 I acknowledge the difficulties summarising national planning instruments, in
2597 particular where they include concepts from te ao Māori and also the [03.23.44]
2598 whether to cross-reference to national direction or not.

2599
2600 Although the prioritisation of mauri is included in the definition of decision-
2601 making principles in my view this is a fundamental pillar that should be included
2602 upfront in the Chapter Introduction to guide and direct the subsequent provisions
2603 of the Chapter.

2604

2605 The perspective that I have described here places indigenous biodiversity at the
2606 centre of our management approach and then we organise ourselves around it.
2607
2608 Therefore I request that the relief sought in my speaking notes be included.
2609
2610 The other key point that I would like to speak to is Policy IE.2.
2611
2612 In reference to Policy IE.2 I support the evidence of Ms Burns representing
2613 Rangitāne o Wairarapa, in regard to ensuring that the decision-making
2614 principles of the NPS-IB are given effect to in the absence of local expressions,
2615 and that local expressions are given effect to once they are developed.
2616
2617 I therefore support the amendments proposed in Ms Guest’s rebuttal evidence in
2618 this regard. Ngā Hapū o Ōtaki look forward to developing our expressions of the
2619 decision-making principles for indigenous biodiversity and working together
2620 with decision-makers and resource users to give effect to them.
2621 [03.25.05]
2622 As identified in the rebuttal evidence of Ms Guest, this will require a close
2623 relationship with mana whenua to determine the parameters of this approach.
2624
2625 In regard to the other points made in my speaking notes, these set out our support
2626 for the proposed amendments and as I have already spoken to we retain that
2627 position.
2628
2629 I welcome any whakaaro from Whaea Denise and Dr Spinks, and any pātai from
2630 the Commissioners. Ngā mihi kia koutou.
2631
2632 Spinks: Kia ora Mel. Just in addition, just to support that whakaaro more, not only are
2633 we seeing that depletion of the mauri within our waterways, but also that very
2634 early deforestation within our rohe. So all those ngahere species for a very long
2635 time have been cut off. There was a whole lot of agricultural industry. That’s
2636 moving away and we’re getting the urbanisation coming in. So that’s why we
2637 are supportive of looking after that indigenous biodiversity. Not only is there
2638 loss of the mauri but we have the loss of intergenerational knowledge transfer
2639 around the cultural practices, but even some of the narratives of our children,
2640 our mokopuna can’t see these species and they don’t have that same connection.
2641
2642 Certainly within a lifetime of a number of our elders talking about how the
2643 waterways or the ngahere used to be abundant with introduced pests, weeds and
2644 things like that, we’ve got to be addressing those in order to bring back that
2645 restoration of those indigenous species, so that we can have that connection for
2646 our tamariki.
2647
2648 Hapeta: Tēnā koe Mel, me āu kupu kōrua ko Aroha. I guess in summarising, I think
2649 we’ve been relatively consistent in our comments to the panel, as we have come
2650 before the panel during the later part of 2023, and we’re back here again today
2651 – potentially might see you again in six weeks’ time for the final hearing.
2652
2653 What Aroha and Mel have described, I just want to take an example. One
2654 example would be I had a conversation actually Sunday with the tumuaki of one
2655 our small kura here in Ōtaki that’s attached to the Catholic Church at
2656 Pukekaraka, St Mary’s Church and St Peter Chanel is the name of the school. A

2657 small Catholic school in Ōtaki now, but working really hard to preserve and
2658 maintain a section of our Maungapōuri Stream that meanders all the way from
2659 the Tararua foothills all the way out to the beach. It traverses all of Ōtaki through
2660 its business area, residential and other farming areas here in Ōtaki.

2661
2662 The children's concern is for the amount of waste that flows down through their
2663 stream. Just on the other side of the stream recently is a new subdivision, or
2664 relatively new – been in Ōtaki now for about maybe eight or nine years. It's a
2665 substantial subdivision that borders about 250 metres of the Maungapōuri
2666 Stream.

2667
2668 The comments from the teachers at the kura and the tumuaki, that the amount of
2669 essential household waste and plastic that now meanders down the stream, and
2670 then it catches at the culvert that hits the border of the kura, where it goes out
2671 under the road and then it traverses the rest of the farmlands going south out to
2672 the mouth of the Waitohu River.

2673
2674 These are young children from Year 1 up to about Year 7, that are looking for
2675 support to help them clean up their little patch of the Maungapōuri, and a strip
2676 of water that they've made no contribution to but the wider community has.

2677
2678 In there they talk about the biodiversity and the tumuaki is actually an ex-pupil
2679 of the school and recalls the stream in another time in its life, a good fifty to
2680 sixty years ago. Just says the transformation in the quality of the water from her
2681 time as a young school girl there, until now, and what your mokopuna are now
2682 witnessing, where they have to clean out the works of the community and
2683 developers; just so that the 250 or 200 metre stretch that meanders around there.

2684
2685 They're a little kura. It is a little kura, all of thirty students, that meanders around
2686 their kura that's been there for well over a hundred years now. They're seeking
2687 support within the community support. They came to us at Ngā Hapū to see how
2688 we could support – and of course we will.

[03.30.00]

2689
2690 Such is the attention and concern across the community. So it's not just ourselves
2691 sitting up here talking about it. We have the younger generation saying to us,
2692 "Whaea, who puts the rubbish in the stream? Who puts all this paru in the water
2693 at the back? It comes under our thing and then when it gets to the culvert it floods
2694 and it comes back into our playground, or comes back over our rugby field."

2695
2696 So when you get one little school that talks about that. Then I could go across
2697 the road and talk to you about Te Kura Kaupapa Māori o Te Rito, or
2698 Whakatipuruanamo, and all the other kura Māori in Ōtaki and talk about the
2699 work that they are doing to tidy up the effects of stormwater from the town of
2700 Ōtaki.

2701
2702 It goes on. If I go out to the farmlands right next door, that are under GWRC and
2703 the work they have done with the stopbanks there, and I can go down the road
2704 and talk about the flooding, but in there Melanie and Aroha have described the
2705 loss of mahinga kai and the traditional kai available.

2706
2707 There has been several books published by our community here in Ōtaki about
2708 their lifetime and the five generations of some families that have spent time at

2709 the mouth of the Ōtaki River or on the Waitohu, or on the Maungapōuri with
2710 their nets traditionally catching their seasonal kai. The capacity to do so has been
2711 greatly diminished in the last five to ten years, substantially.
2712

2713 As Ōtaki continues to be a target for residential development, so too will the
2714 impact increase on our waterways and our wai. We talk about te mana o te wai,
2715 me te mauri o te wai. Ko te mauri o te wai ko te mauri o te tangata. Ko te mauri
2716 o te wai e kōrero ana tātou mō te mauri o tēnei hapori o Ōtaki, o ngā hapū o
2717 Ōtaki. Where that mauri is impacted on, so too is the mauri of our people.
2718

2719 Mel’s words earlier are lived in real experiences for our small community here
2720 in Ōtaki.
2721

2722 So really important. I hope that we are successful, along with the other
2723 submitters, in being able to support the process and the proposed plan changes
2724 that are on the Table and being discussed by GWRC.
2725

2726 Tēnā koutou.
2727

2728 Chair: Kia ora. Thanks very much. I will see if the panel has questions.
2729

2730 Paine: Tēnā koutou Ngā Hapū o Ōtaki. Welcome.
2731

2732 Before I ask Ms McCormick something, I just want to say that the loss of the
2733 ability to transfer intergenerational knowledge has been a concern all around the
2734 motu. We do take note of that.
2735

2736 The question I have for you Ms McCormick was, when you were talking about
2737 Policy 47, the last sentence you say, “We have some residual concerns that some
2738 significant sites are intentionally omitted from regional and district plans.” I just
2739 wanted to know why you would say that?
2740

2741 McCormick: Kia ora. Tēnā koe. I guess when I wrote that that was speaking from a general
2742 perspective rather than awareness of any particular sites that may or may not be
2743 omitted from a plan; to recognise that our mātauranga, we don’t always want to
2744 put that in a plan for I guess various reasons, but in particular to protect our
2745 sovereignty over those spaces and our village, and the pūrākau or kōrero that
2746 might go alongside that.
2747

2748 I guess there’s a lot of difficulty there. I guess there’s something there around if
2749 we don’t put it into a plan then there may be challenges around protecting it, or
2750 knowing that it’s there. Planners and the Council may not be aware of it.
2751

2752 I guess it’s just going to say that there needs to be a relationship there in order to
2753 protect those spaces where Ngā Hapū or other mana whenua don’t necessarily
2754 want to include a site within a plan, because that doesn’t recognise our world
2755 here and our approach to maybe put something that has a particular wāhi tapu,
2756 or there’s tapu around that site, and put it in a plan.
2757

2758 Hopefully that provides some answer or some insight into why I included that.
2759 [03.35.00]

2760 Spinks: I can jump in and support you there Mel. I think it is in reference to mana whenua
2761 potentially intentionally not putting some of those areas in. Having the ability
2762 that we might not have signalled it because we are protecting it for whatever
2763 reason. That may not have been identified through regional planning structures
2764 and district council a date [03.35.32], so making sure that those areas that we
2765 still know are significant areas of biodiversity can be protected in the future. I
2766 think that's where we are coming from in that statement.
2767
2768 It's something that I've talked a little bit with GWRC about, is some of that
2769 expert knowledge around mana whenua being recognised to date yet within
2770 monitoring and other aspects of the monitoring indigenous. Some of the sites
2771 that have been recognised as significant for money and I think I presented a
2772 paper last time, that to date hasn't included some of those historical areas like
2773 [03.36.20] with the abundance of manu around that stream; isn't the regional
2774 council plan or district council plan if there's significant [03.36.29] in our
2775 knowledge to know areas like that.
2776
2777 So at the moment we are just making sure that we are working with mana
2778 whenua as partners and moving forward we can help protect those sites.
2779
2780 Paine: Thank you Whaea. Sometimes you find yourself between a rock and a hard place
2781 – that you can identify your significant sites and that's to your detriment, but if
2782 you don't identify your significant sites then that's also to your detriment.
2783
2784 It would be good to find a mechanism that you can do that, but not announce to
2785 the world where your significant sites are.
2786
2787 Thank you for your kōrero.
2788
2789 Chair: Kia ora. Ms McCormick you were making about Māori, I think you
2790 acknowledged that the decision-making principles including the need to
2791 prioritise Māori intrinsic value and wellbeing of indigenous biodiversity, that
2792 principle must inform the management of indigenous biodiversity. I understand
2793 that you are still wanting... is it just in the Chapter Introduction? Have I got that
2794 correct?
2795
2796 McCormick: Yes. I was just going to say that it is in the introduction. I think there is a bit
2797 around mauri at the start, just reflecting on it now.
2798
2799 I don't want to use the word 'issue' but it is an issue. It's the paraphrasing and
2800 not capturing what I think is quite significant and that is the mauri – the
2801 paraphrasing of the decision-making principles in the chapter introduction. I just
2802 feel it is my view that I think it's missing something by not including the
2803 prioritisation of mauri.
2804
2805 Wratt: I'm not sure whether you listened into any of this morning's session, but I did
2806 question the Reporting Officers in relation to that. Ms Guest said that she would
2807 consider in her reply consideration of adding mauri into the decision-making
2808 commentary in the introduction.
2809
2810 McCormick: Thank you. I didn't capture this morning's other similar. Thank you.
2811

2812 Kara-France: Kia ora e ngā rangatira mā. Ko Ina Kara-France, Commissioner Kara-France
2813 speaking. Just to echo Commissioner Wratt’s comments regarding the National
2814 Policy Statement for Indigenous Biodiversity, Point 1.5 – decision-making
2815 principles from 1 to 3 and (a) to (g), they will be included in the introduction
2816 won’t they Ms Guest.

2817 [03.40.00]

2818 In particular, (a) prioritise the mauri intrinsic value and wellbeing of indigenous
2819 biodiversity, etc. etc. moving onto (g).

2820

2821 McCormick: Ka pai.

2822

2823 Chair: What would good look like to you – I guess I’m interested in the local
2824 expressions. Policy IE.2 which talks about giving effect to the decision-making
2825 principles which we have been talking about, and the local expressions of those
2826 decision-making principles. In your evidence McCormick you talk about
2827 supporting Policy IE.2 and appreciating that opportunity to become involved in
2828 that local expression of the decision-making principles.

2829

2830 Could you talk a little bit about if that is done well what would that look like?

2831

2832 McCormick: What would the process look like?

2833

2834 Chair: Yes, to incorporate Ngā Hapū o Ōtaki’s perspectives.

2835

2836 McCormick: I can offer my whakaaro and I think this is a really good place for Ngā Hapū o
2837 Ōtaki to speak to what that would look like.

2838 Typically I guess the first thing I was going to offer was, I guess, a process
2839 similar to whaitua. I was involved in the start but then less involved as the
2840 process has gone on. Dr Spinks can probably provide a very good summary of
2841 that.

2842

2843 I think when I think about what would that process look like to draft our own
2844 local expression of decision-making principles, definitely they’re in partnership
2845 with Greater Wellington Regional Council. There’s space or a need for
2846 everyone, including the community as well with the decision-making principles.
2847 Just a partnership process where we sit down together and draft our own
2848 interpretation of what that looks like to us, and what is giving effect to the
2849 decision-making principles.

2850

2851 Whaea Denise and Aroha, do you have any whakaaro from your perspective, as
2852 Ngā Hapū, what a good process actually looks like.

2853

2854 Spinks: We would certainly, along with ARTS Ngāti Toa and Ngāti Awa, push for to
2855 see that Tiriti model approach – an equal partnership working with the
2856 community as well as the councils into shaping the areas to protect, how to move
2857 forward and how we are measuring that. Certainly we’re getting to some great
2858 places in the whaitua writing that up currently and looking for that December
2859 date still; writing into some of that drafting around working on those actions
2860 plans moving forward.

2861

2862 I think a really honest and equal partnership from the beginning. I think that
2863 would be a fabulous way to roll out the indigenous biodiversity work as well.

2864
2865 Wratt: Just exploring that a little more, do you think there's a need for the Regional
2866 Policy Statement to be more specific about the requirement on councils to
2867 [03.45.00] develop the protocols for those processes? I am referring in particular I guess
2868 back to Hutt City Council and a concern they have. Their pushback was that this
2869 should only apply to significant biodiversity and that not making that constraint
2870 just means it's such an open process that it will, I guess, require everything that
2871 happens to come with no guidance in terms of how it's done I guess.
2872
2873 I think this morning our reporting officer noted that the Wellington Regional
2874 Council does have protocols with different iwi Māori groups and as to how that
2875 is dealt with; and that that really needs to happen across the board. I'm sure
2876 there's some of that already in place. It's just how do you have pragmatic
2877 processes that work both for iwi and for the developers?
2878
2879 McCormick: I acknowledge that whakaaro in that perspective from Hutt City Council. For
2880 me, it's a little bit horse before cart, or cart before the horse – whatever way. I
2881 think the priority should be on developing the local interpretation for decision-
2882 making principles of indigenous biodiversity first. Then again, for me, it comes
2883 back to centring that at the centre of a process, and then how do we organise
2884 ourselves around that. That's when we would start to look at the protocols and
2885 how would that practically work? Is it every resource consent then needs to be
2886 considered against these decision-making processes?
2887 I think the Hutt City Council referred to the need to acquire expert cultural
2888 evidence every single time that a decision is made. I am not sure that's exactly
2889 what the outcome would be, but I think if the first focus in on what does those
2890 decision-making processes look like, and that's done through a partnership
2891 process together, then I think a part of that outcome would be the protocols and
2892 how that is practically done.
2893
2894 Spinks: We would be supportive of that explanation Mel. I think to kind of limit it to
2895 significant biodiversity is an issue. I think who determines what that significant
2896 biodiversity is, as mentioned just a bit earlier, that whakapapa and which species
2897 is not significant or not a taonga; because they all have different roles – whether
2898 it's the little moth that come to a flower that's fertilising that flower and it's
2899 droppings causing something else. You just don't know all the little wee
2900 intricacies of many of our native species. With four thousand species either
2901 threatened or at risk of extinction, two thousand those only found in New
2902 Zealand. Which ones, and are we checking how much monitoring has been
2903 done? There are so many significant habitats that haven't been looked at or really
2904 studied. You don't have multiple experts of all the different types of species –
2905 having been in there and found out what exists in those habitats. Even our urban
2906 habitats, things are still trying to survive in those areas.
2907
2908 I would be really concerned about looking at anything that just has, "Let's just
2909 protect the significant habitats." That would be a bit concerning.
2910
2911 Kara-France: Did you get a copy of the rebuttal evidence this morning?
2912
2913 McCormick: I do have a copy on my copy.
2914
2915 Kara-France: Did you receive the rebuttal evidence this morning? You did? Okay. Last week.

2916
2917 The point raised, and why I'm raising it, is that some of the issues that you have
2918 highlighted have been addressed within Ms Guest's rebuttal – in particular
2919 partnership, in particular the engagement partnership. They are here within the
2920 rebuttal.

2921 [03.50.00]
2922 McCormick: That's why I just tried to focus my speaking notes. Sorry. Maybe perhaps I didn't
2923 come across clear enough on the mauri. Because from my read of Ms Guest's
2924 rebuttal evidence was that she did not support including reference to mauri in
2925 the decision-making principles.
2926
2927 Then my other point was just in regard to Policy IE.2 and supporting Ms Burns'
2928 evidence and Ms Guests' rebuttal evidence around NPS-IB and drafting the local
2929 expressions of those decision-making principles.
2930
2931 Hopefully that's come across clearly but perhaps not.
2932

2933 Kara-France: Kia ora. It has loud and clear. Just in reference to the national policy statements
2934 for indigenous biodiversity, Point 1.5, decision-making principles (1) the
2935 National Policy Statement prioritises the mauri and intrinsic value of indigenous
2936 biodiversity and recognises people's connections and relationships with
2937 indigenous biodiversity," etc. etc.
2938
2939 That particular decision-making principle highlighted (1) to (3) and point (a) to
2940 (g) is acknowledged to be recognised and highlighted with the introduction. Is
2941 that correct Ms Guest? It was discussed this morning.
2942

2943 Guest: Certainly happy to add reference into mauri, into the authority for mauri. I
2944 wasn't necessarily recommending that we repeat all of the principles but
2945 definitely looking at adding the mauri as requested.
2946

2947 Chair: Was there anything else that you would like to share with us Ngā Hapū o Ōtaki,
2948 Ms McCormick? Has that covered the points that you wanted to talk to us about
2949 today?
2950

2951 McCormick: Ka pai, for me it has. I guess my hope that it's come across to support Greater
2952 Wellington Regional Council in the importance of these provisions. That's really
2953 why I thought it was still important to provide our own submission, is that our
2954 support is on record, to I suppose to deem [03.52.22] the contrary to this then
2955 comes away from Ngā Hapū o Ōtaki have put forward today in our submission.
2956
2957 That's all from me. I don't know whether Whaea Denise or Dr Spinks have any
2958 whakaaro.
2959

2960 Hapeta: Tēnā koutou. Tēnā koe Mel. Thank you for your work to date.
2961
2962 I guess what I would like to share, just in terms of that comment Ina in regards
2963 to GWRC, is that Ngā Hapū o Ōtaki currently have a very good working
2964 relationship with Greater Wellington Regional Council. I should say that. There
2965 is not many things that we haven't been able to agree on and support one another.
2966

2967 Certainly in terms of working alongside them and getting them to understand
2968 where we are here in Ōtaki, we've had a really good fifteen months in working
2969 alongside GWRC and KCDC on regional matters and regional development, etc.
2970 There are still some matters that we are all working on collaboratively together,
2971 that will hopefully end up with a good result for all three partners. But, I would
2972 just say that to date we have had a very good working relationship with GWRC.
2973 It's ongoing and as the people change at our end and change at the other end, of
2974 course the interpretation changes with it. I guess that's what we look at, is having
2975 something that we all agree on what's good for the future. I think if we can get
2976 to that point then, yeah, kua pai tātou.
2977
2978 Tēnā koutou.
2979
2980 Chair: Kia ora. Thanks very much for joining us again. We might see you for the final
2981 hearing stream possibly. Thank you.
2982
2983 That brings us to the end of the first day of hearing submitters. We will end with
2984 karakia Ms Guest. Thank you.
2985 Guest: *Kia hora te marino*
2986 *Kia whakapapa pounamu te moana*
2987 *Hei huarahi mā tātou i te rangi nei*
2988 *Aroha atu, aroha mai*
2989 *Tātou i a tātou katoa*
2990 *Hui e, haumi e, tāiki e*
2991
2992
2993 [End of recording 03.54.48]

Greater Wellington Regional Council

Transcription
Hearing Stream Six Indigenous Ecosystems
Day Two

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Wednesday 21st February 2024

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Mōrena. Karakia tātou.
2
3 Guest: Kia tau ngā manaakitanga a te mea ngaro
4 Ki runga ki tēnā, ki tēnā o tātou
5 Kia mahea te hua mākihikihi
6 Kia toi te kupu, toi te mana
7 Toi te aroha, toi te reo Māori
8 Kia tūturu, kia whakamaua
9 Ki tīna, tīna, hui e, tāiki e
10
11 Chair: Kia ora Ms Guest.
12
13 Mōrena, nau mai haere mai ki te kaupapa o te rā. Ko Dhilum Nightingale tōku
14 ingoa. I am a Barrister and hearings Commissioner and I live in Te Whanganui-
15 a-Tara Wellington. I am chairing the hearing panels today.
16
17 It is a pleasure to welcome everyone to the second day of the hearing of
18 submitters on this indigenous ecosystems topic, hearing stream 6, for PC1 to the
19 Regional Policy Statement for the Wellington Region.
20
21 Welcome Ms Levenson from Hort New Zealand.

22
23 Health and safety messages or are well all okay with that. If the fire alarm rings
24 we head down the stairs. Wharepaku I'm sure you know where they are from
25 last time, just down the corridor. Otherwise we'll follow the instructions of the
26 staff if there's an emergency.
27
28 We are sitting here as two panels today. I will ask if the other panel members
29 would like to introduce themselves. Kia ora.
30
31 Paine: Thank you Madam Chair.
32
33 Tēnā koutou katoa. Ngā mihi nui ki a koutou. Ko wai au? Ko Piripiri te maunga,
34 ko Waituhi te awa, ko Waikawa te marae, ko Te Ātiawa, ko Ngāi Tahu ōku iwi.
35 Ko Glenice Paine tōku ingoa.
36
37 My name is Glenice Paine. I am an Environment Court Commissioner. Kia ora.
38
39 Wratt: Kia ora. Mōrena. Ko Gillian Wratt tōku ingoa. I am based in Nelson Whakatū.
40 My background is in the science sector, as previous Chief Executive of
41 Antarctica New Zealand and Cawthron Institute. I now have various governance
42 roles in science and conservation. I am an independent Environmental
43 Commissioner and Freshwater Commissioner. I was initially appointed onto the
44 panel as a Freshwater Commissioner, just on the Freshwater Panel but am now
45 on both panels. Kia ora. Welcome.
46
47 Kara-France: Tēnā koutou katoa. Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato
48 Tainui, ko Ngāti Koroki Kahukura, ko Ngāti Tipa, ko Ngāti Kōata ki Rangitoto
49 ki te tonga. Ko Rongomaiwahine, ko Kahungunu, ko Ngāti Pahauwera, ko Ngāti
50 Popoia, ko Maungaharuru Tangitū [03.16]. Ko Ngāti Whakaari, ko Ngāti
51 Ruruku, ko Ngāti Kahungunu. Ko Ngāti Tūwharetoa, ko Ngāti Te Rangi Itā. Ko
52 Te Ati Haunui-ā-Pāpārangi, ko Tūmango, ko Tūpoho, ko Paerangi, ko Ngā
53 Rauru, ko Ngāti Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā
54 takiwā. Nō reira, tēnā tātou katoa.
55
56 Independent Hearing Commissioner. I am on both panels. I am based in Tāmaki
57 Makaurau. I do have a number of statutory board appointments. Nau mai haere
58 mai. Welcome. Kia ora.
59
60 Chair: If the Council team in the room would like to introduce themselves.
61
62 Guest: Mōrena. Ko Pam Guest tōku ingoa. He Kaitohutohu Matua ahau. I am Pam
63 Guest. I am the Lead Reporting Officer for this hearing stream. Welcome.
64
65 Chair: Thank you. Just briefly, if you could press the button to speak into the
66 microphone and say your name before you begin for the transcript. We have
67 hearing times allocated and the Hearing Advisors will let us know when we are
68 getting close to those time timeframes, so we can make sure everyone gets heard
69 today.
70 Does anyone have any procedural matters they would like to raise?
71
72 Okay, we'll begin.
73 [00.05.00]

74 Thank you Ms Levenson. We have your speaking notes and we have read those
75 and obviously read Horticulture New Zealand’s submission. If you are able to
76 take us to the key points where your views differ from those of the Reporting
77 Officers on these Hearing Stream 6 provisions, and leave time for questions.
78 Thank you.
79

80 Levenson: Kia ora, my name is Emily Levenson and I am an Environmental Policy Advisor
81 at Horticulture New Zealand. Thank you for having me again to speak to you
82 this time to Hearing Stream 6 on Indigenous Ecosystems.
83

84 I have a very short presentation for you today and I will not have any points that
85 are differing from the S.42A author in this case. I would more like to draw your
86 attention to the one where we strongly agree.
87

88 As we have stated in previous hearing streams, Horticulture New Zealand’s key
89 interest is in the National Policy Statement for highly productive land, and that
90 it's implemented to the extent practicable to ensure balanced direction
91 throughout Plan Change 1.
92

93 In this Chapter, the Section 42a author Pamela Guest agreed with our submission
94 to include a clause on highly productive land in Method 32. We believe that this
95 amendment is well-suited to Method 32, which provides direction for
96 identification and protection of significant values, including highly productive
97 land.
98

99 Ms. Guest’s recommendation to insert this clause necessitates a definition of
100 highly productive land to support it, which is something that HortNZ has
101 suggested in previous hearing streams and our original submission.
102

103 As Ms. Guest determined that this amendment was in scope, we would like to
104 point out that other amendments throughout the plan related to highly productive
105 land should also be in scope to implement the NPS-HPL as soon as practicable.
106

107 We recognise that Greater Wellington Regional Council intends to fully
108 implement the NPS-HPL through another Plan Change within the timeline laid
109 out in that policy statement, but we believe that PC1 can do the initial work of
110 recognising highly productive land in advance of an upcoming, dedicated Plan
111 Change.
112

113 Thank you very much for your time. I’m happy to answer any questions you may
114 have.
115

116 Chair: Thank you. Panel members?
117

118 Paine: Good morning Ms Levenson. I have just got a couple of questions.
119 Ms Guest has supported inserting a clause “identify areas of highly productive
120 land.”
121

122 The actual wording is identify and protect highly product land – that’s what Ms
123 Guest has inserted.
124

125 Do you think that needs a qualifier since there's different grade or levels of
126 highly productive land? Is there a need for a qualifier in that provision at all?
127

128 Levenson: In terms of a qualifier, are you referring to LUC1 versus LUC2 or 3?
129

130 Paine: Yes.
131

132 Levenson: In this case, no, I don't think there should be a qualifier. LUC1 through 3 all
133 need to be protected to the same degree under the National Policy Statement for
134 highly productive land.
135

136 Paine: You made a reference to other provisions that would be in scope. Did you have
137 a list of those, or have you actually put those down somewhere?
138

139 Levenson: We have discussed them throughout our evidence and they are in tables in our
140 evidence for each of the previous hearing streams, but I could compile those in
141 one document if you like.
142

143 Paine: I can search them out. Thank you. Thank you Madam Chair.
144

145 Chair: Ms Levenson, have you seen the legal submissions provided by Counsel for the
146 Council, for this Hearing Stream – the ones dated 19 December 2023?
147

148 Levenson: Yes I have.
149

150 Chair: There's a lot of analysis in there about giving effect to NPS's including analysis
151 about the NPS-HPL. I will just give you a moment if you did want to bring that
152 up.
153 [00.10.00]

154 One of the things that counsel talk about are the timeframes within each NPS,
155 the timeframes for implementation. Is it your understanding that in terms of the
156 NPS-HPL the only requirement, the only implementation timeframe
157 requirement is around the mapping? I think in the NPS-IB there is an
158 implementation timeframe, something like "as soon as reasonably practicable,"
159 or words like that.
160

161 Is there something equivalent in the NPS-HPL that you're aware of?
162

163 Levenson: As far as I'm aware it's just with regard to the mapping and then the need to
164 create provisions and plans based on that mapping as soon as practicable
165 afterwards.
166

167 Chair: Other requirements including provisions, Regional Policy Statements and plans
168 to give effect to the NPS-HPL, there aren't any specific timeframe obligations?
169

170 Levenson: Not off the top of my head.
171

172 Chair: I will check that again but I think that aligns with where I had got to as well.
173

174 Then as Commissioner Paine said, it's the issue of scope – so scope coming from
175 the tests. In the Motor Machinist case we looked at this point about scope in one
176 of the earlier hearing streams that you presented on.

177
178 I think we understand the framework and what it is that we are able to
179 recommend. We will work through those tests and your submission, and make
180 the recommendations that we think are appropriate.
181
182 Just following on from that, the relief that you're seeking on this topic, if we
183 were to support your recommendation can that be made without a definition of
184 highly productive land?
185
186 Levenson: I think there might be confusion within the plan because there is that other
187 definition of highly productive agricultural land that only refers to LUC Class 1
188 and 2 and excludes Class 3 which is included in the National Policy Statement.
189 So to use the phrase highly productive land and highly productive agricultural
190 land might cause some confusion there.
191
192 Chair: There's a transitional regime though isn't there until the full NPS is implemented
193 and the mapping is done. There's transitional recognition protection of highly
194 productive land that I understand is not limited to only Class 1 and Class 2.
195
196 Levenson: Yes that's correct.
197
198 Chair: But, your view is that still a definition that aligns with the NPS-HPL is...
199
200 Levenson: Most appropriate.
201 [00.15.00]
202 Chair: Off the top of your head can you remember if there is scope in your submission?
203
204 Levenson: Yes we had numerous submission points about the National Policy Statement
205 for highly productive land in our original submission.
206
207 Chair: Seeking a definition?
208
209 Levenson: Yes, seeking a definition.
210
211 Wratt: I do have one question and it's around the different land classes. I am not as
212 familiar with the NPS-Highly Productive Land as perhaps I should be, but are
213 there different requirements in terms of protecting - following on from
214 Commissioner Paine's question? Are there different requirements for protecting
215 land use classes 1, 2 and 3?
216 Levenson: Not in the National Policy Statement for Highly Productive Land, no. The
217 definition encompasses all three.
218
219 Wratt: Are there anywhere else? What makes the difference between how you should
220 consider those land uses?
221
222 Levenson: Under this new National Policy Statement regime there should not be a
223 difference in how you consider the three land uses. It's in the original Plan
224 Change 1. The only remaining definition is from the operative plan which
225 separates out LUC 1 and 2 with protections, but does not include LUC 3.
226
227 Chair: I think that was all the questions that we had. Your speaking notes were very
228 clear. Thank you.

229
230 Levenson: Thank you very much.
231
232 Chair: We are slightly ahead of schedule. Should we have a little break? We'll just take
233 about a ten minute break. Thank you.
234
235
236 [Break taken – 17.18].
237
238 **Wellington Fish & Game Council**
239
240 Chair: Kia ora and welcome back to Day 2 of Hearing Stream 6, Indigenous Ecosystems.
241 A warm welcome to Wellington Fish & Game Council. Mr Malone, we can see
242 you there. Is the rest of your team there – Ms Coughlan and Ms Campbell?
243
244 You have presented to us all before. Welcome back. Would you like us to
245 introduce ourselves again? Are you happy that you know who we all are?
246
247 Malone: We're fine thank you Madam Chair. Do you have a copy of Ms Campbell's
248 speaking notes?
249
250 Chair: We do yes.
251
252 Malone: Have you had a chance to read them?
253
254 Chair: Yes we have. We have also read your legal submissions and Ms Coughlan's
255 evidence from the previous hearing stream. I think we have all the documents.
256
257 I will hand over to you, and if you are able to take us to the main points, in
258 particular where you are seeking additional relief to that proposed by the
259 Reporting Officer.
260
261 Malone: I really have nothing to add to the legal submissions. They were very, very brief.
262 The amendments obviously relate to two provisions, Method 53 and the
263 definition of restoration. Ms Campbell has addressed that in her evidence and in
264 her speaking notes. I think from here it may just be a matter of whether you have
265 any questions for Ms Campbell.
266 [00.20.00]
267 Chair: Thank you. I had a question. Sorry, this might have actually been in Ms
268 Coughlan's evidence. The question was someone mentioned a comment about
269 lessening or removing protections for non-indigenous systems, habitats and
270 species could weaken climate change resilience for the region. I was just
271 wondering if you could explain that a bit more and why that is your view.
272
273 Malone: Whose comment was that? Was it Lily or Amy? Which one of you was it?
274
275 Campbell: I believe that would be in Amy's evidence. Amy would you be happy to expand
276 on that?
277
278 Coughlan: Absolutely. Just trying to think back that far. Usually around that comes down
279 to if protections are removed from water bodies in general then things can
280 change in terms of how those water bodies are protected, not just for the species

281 that Fish & Game manage, which in our case would be trout in particular, but
282 then you lose some things around how those water bodies are being protected
283 for say flood protections, can actually have further downstream impacts when
284 big flood events happen – as we have seen with Cyclone Gabrielle quite recently.
285 I am not saying that there’s a direct link here, but there are knock-on implications
286 for removals of protections that actually influence and seem to be promoting
287 human welfare, which end up damaging the freshwater ecosystem and actually
288 then further damaging potentially human infrastructure, human health and
289 human life. As climate change is obviously changing, the things that we think
290 are going to engineer our way out of solutions, at the detriment of the freshwater
291 ecosystem, often don’t seem to come through the way we would like them to.

292
293 So making sure that we have those voices and those protections for the habitats
294 of the valued introduced and definitely obviously the indigenous ones; can find
295 a way for people to have those conversations about what is the better way
296 forward for everything that relies on water, which is all of us.

297
298 Chair: I guess that relates the relief that you’re seeking in Method 53. There are quite
299 a few methods actually in this topic that relate to partnering with stakeholders,
300 the community. It’s Method 53 where you are still seeking a change there? Is to
301 not limit that method to indigenous ecosystems because it flows from Objective
302 12 which is broader?

303
304 Malone: That as I understand it Madam Chair is fundamentally the case. Method 53
305 applies more broadly than to just the provisions in relation to indigenous
306 ecosystems. It also applies to the provisions in the RPS relating to the coastal
307 environment rivers, lakes and wetlands. If you go and read some of those
308 provisions when Method 53 applies, you will see that they are not limited to
309 indigenous ecosystems. I am sure Ms Campbell will correct me if I have got the
310 wrong end of the stick there, but I believe that’s the fundamental point.

311
312 So while Fish & Game’s focus is obviously on trout, limiting this method to
313 indigenous ecosystems I would image could have some flow-on effects in
314 relation to those other provisions that are not solely about indigenous
315 ecosystems.

316
317 Is that about right Lily?

318
319 Campbell: Yes. I think you have summed it up quite well Craig. Not only is Method 53 a
320 method to implement objectives and policies in the indigenous ecosystems
321 [00.25.00] chapter, but it does also apply to the freshwater and the coastal environment
322 chapters. It is not intended to be narrowed down to that indigenous ecosystem
323 scale, but is intended to apply across the board. That’s my understanding.

324
325 Chair: Miss Campbell, I notice that Policy IE.3 refers to the restoration of indigenous
326 ecosystems and habitats. That has a broader application. Would that wording
327 achieve the relief you’re seeking if it was to come into Method 53?

328
329 Campbell: I think in that case it would be a very careful drafting exercise, as if you were
330 protecting or restoring indigenous ecosystems and habitats are you addressing
331 indigenous ecosystems and indigenous habitats, or are you addressing
332 indigenous ecosystems and all other habitats – non indigenous and otherwise?

333
334 I guess my question to you is, would you interpret that to be read that you're
335 addressing both indigenous and non indigenous habitats?
336
337 Chair: I guess in the broader sense. I don't know if habitats is defined. There may be a
338 definition in the operative RPS, we can check that.
339
340 I was thinking that the bullet points...
341
342 Campbell: If I may, I think the intention of this method is to apply broadly if you remove
343 reference to indigenous then that's the most efficient way to do that. There are
344 methods as well as objectives and policies in the indigenous ecosystems chapter
345 that should be directed solely to indigenous ecosystems and that's appropriate.
346 However, I believe that this particular method doesn't need to have that narrow
347 scope. I think the easiest way to keep it applying to the areas that it should be, is
348 just to leave out reference to indigenous.
349
350 Chair: I think the provisions that are referred to at the end there, Methods IE.3, CC4
351 and CC6, I think they all refer to indigenous – or the first one refers to the
352 biodiversity strategy which is about restoring indigenous biodiversity. I guess
353 I'm just wondering if broadening out – so if we deleted indigenous from there,
354 would further changes be needed if those specific provisions are also focused on
355 indigenous ecosystems?
356
357 Campbell: That's a really good question. Because Fish & Game weren't explicitly seeking
358 relief to those particular methods and policies I haven't looked into them in
359 detail and the potential for removing indigenous from those – but I am happy to.
360
361 We have focused on Method 53 because of where it sits under Objective 12. A
362 lot of our time went into requesting relief in relation to provisions in Hearing
363 Stream 5. Sorry, I can't answer that at the moment, but I am happy to look into
364 that if you would like.
365
366 Chair: We'll look into it as well. The officer might want to respond on that in their
367 reply.
368
369 Just one final thing from me, and it relates to Hearing Stream 5. As a planner, if
370 you're seeking a consent application on behalf of Wellington Fish & Game, say
371 to perhaps do some restoration work on a waterbody that had benefits for trout
372 and salmon habitat for example, you wouldn't just be looking at these provisions
373 in Hearing Stream 6, you would be looking elsewhere in the RPS to see what
374 policy support you could get for that proposal.
375 [00.30.00]
376 You would be looking at the freshwater provisions and as you pointed out in
377 your evidence or speaking notes, Ms Pascall has supported some further
378 amendments in that hearing stream to give effect to the relief you were seeking.
379
380 Why do you still think that changes are needed to these provisions, which are
381 focused on indigenous biodiversity to take more account of non indigenous
382 species, habitats and ecosystems?
383

384 Campbell: That's a very good question. Yesterday in the S.42A officer's opening, I heard
385 a question around what forms an indigenous ecosystem and the reasons behind
386 limiting that Method 53 to indigenous ecosystems, which is obviously related to
387 funding and initiatives, and obviously councils have limited funding.
388
389 I think it wasn't particularly clear from the S.42A authors on would trout and
390 salmon habitat be considered part of an indigenous ecosystem – and it comes
391 down to how you actually define that ecosystem?
392
393 So there is some uncertainty here on whether trout and salmon habitat has
394 actually been actively excluded by referring to indigenous ecosystems.
395
396 It's quite difficult because we are not sure exactly where that sits to know the
397 risks associated with excluding non-indigenous species. However, there is
398 higher order direction to protect that habitat, so it's important obviously to mana
399 o te wai includes community values and stakeholder values, so it's important to
400 Fish & Game that we pursue these avenues to ensure that those values are
401 provided for.
402
403 So while we are so appreciative and very supportive of the recommendations
404 made by Ms Pascall, and it was great progress, I think this is also a place where
405 it's worth understanding the implications of including that protection for
406 indigenous and non indigenous, or not.
407
408 Wratt: Could I just explore that a little further and just ask you, what would you think
409 of as a non indigenous ecosystem, a waterbody in particular, that would be of
410 concern to you?
411
412 Campbell: Amy if I could pass this over to you with your knowledge?
413
414 Coughlan: Could I ask for a little bit of elaboration on that question please?
415
416 Wratt: I guess my perception, and this is personal, would be that most trout and salmon
417 are indigenous waterbodies. What is a non indigenous waterbody where you
418 might find trout and salmon, and you would be concerned about, or Fish & Game
419 would be concerned about?
420
421 Coughlan: I guess that comes down to what Ms Campbell was saying in terms of what is
422 an indigenous ecosystem. What proportion of an ecosystem needs to have purely
423 indigenous species, flora or fauna? Those are the legal queries. There's a grey
424 area here and is it okay to have non indigenous people, no indigenous species,
425 non-indigenous plants in there? How many is it until it becomes a waterway
426 that's not considered indigenous?
427
428 Because absolutely this is New Zealand, this is Aotearoa and everything is, and
429 in which case could we protect all of it, I would a hundred percent be behind
430 that and we make it work – we make absolutely everything work and we protect
431 it all. We make sure we are restoring and bringing back into balance the species
432 that should be here in abundance and thriving. It would absolutely be a dream
433 come true for me.
434

435 From that point of view, if you're saying it's because it's in this country, that
436 would be wonderful. I don't know if anybody absolutely hand on heart would
437 be here. It would be great. How do we back this up?
438
439 But, if it comes down to this is an introduced species, so therefore it's not allowed
440 [00.35.00] to be here, because now it makes it a non indigenous ecosystems, well how
441 many species does it take before we say, "They can't be here. They are not
442 actually contributing to this ecosystem." That's where those grey areas start to
443 come in and we start to go, "How is this going to work?"
444
445 It is under that definition because in this country everything is here. Great. But,
446 it's not really the case, so we should protect everything.
447
448 Wratt: So part of your concern I guess I'm hearing is the lack of clarity about what is
449 an indigenous ecosystem?
450
451 Coughlan: Absolutely. Absolutely. And, what are those things that have been introduced
452 that are valuable? Where are they valuable? Where's the right balance here?
453 Nobody here just wants to see introduced species. I'm a hundred percent here
454 for our native species. I am not allowed to speak to that in particular, but
455 absolutely I am. So where is that line? Where does it exist in a balance?
456
457 Like obviously Gold Clams is fairly topical. We wouldn't want to see them
458 anywhere. What is a pest? What is a valued introduced species? What is a
459 healthy water system? How do we live in balance with this while bring up and
460 protecting and restoring those degraded ecosystems?
461
462 I could speak to the Mangatainoka, which is a world class trout fishery – that's
463 from our point of view) and also an amazing, amazing body of water with just a
464 life and a spirit of its own. It is now very degraded on all levels. You can find
465 very trout there. You find few anything in there. The water is unwell.
466
467 Does that make it a non indigenous ecosystem? I'm not sure. I don't know
468 whether that definition [36.53].
469
470 Wratt: I think our Reporting Officer would like to make a comment.
471
472 Guest: Thank you. Just to note the amendment: there was no intent to introduce this
473 level of debate or lack of clarity. I would be very comfortable to report to the
474 operative version of referring to coastal, environment, rivers and lakes. It's
475 simpler. I don't think there's a need for anyone to go away and do more research
476 or definition of terms. It would be simpler just to revert to what was there. Happy
477 to do that in my right of reply.
478
479 Wratt: Thank you Ms Guest.
480
481 To me, it seems that where the restoration activities happen and what's
482 supported does have to be prioritised, so there have to be these conversations
483 about what is the value of a particular waterbody or a particular ecosystem.
484 Those conversations are going to go on anyway because we don't have infinite
485 resources to do every restoration project.
486

487 In my view, I think reverting to the operative plan is a sensible thing to do. Thank
488 you Ms Guest. Thank you Ms Coughlan.
489

490 Chair: If only all relief could be dealt with so efficiently. Thank you.
491

492 Just to follow on. The changes you're seeking to the definition of restoration, I
493 see that you're seeking the word 'indigenous' be deleted before natural
494 character. Is there still an issue in your view with the amendment to the actual
495 definition itself – restoration (in relation to indigenous biodiversity)?
496

497 Are those words an issue? It might be a question for Ms Campbell.
498

499 Malone: They are as I understand it. I will let Ms Campbell speak to that.
500

501 The one thing I would say – and I did a bit of a quick search yesterday (keeping
502 in mind I'm not a planner) but the word 'restoration' appears in a lot of different
503 places in the Regional Policy Statement as it stands at the moment and not just
504 in the indigenous biodiversity provisions.
505

506 Campbell: I can follow on from that. The relief that's been provided, that we have just
507 discussed in relation to Method 53, does make a difference in respect to the relief
508 sought to the definition of restoration. I acknowledge that it's important that there
509 is a specific definition of restoration that applies to indigenous, and that's relates
510 to the National Policy Statement for indigenous biodiversity. I appreciate that.
511 [00.40.00]

512 But, as Craig has mentioned, there are a number of instances in the RPS where
513 restoration is mentioned. Whether a separate definition of restoration regardless
514 of what it's in relation to, that's a potential need. However, I am confident that
515 by including in the chapeaux of that definition, including "in relation to
516 indigenous biodiversity," that means that that definition only applies if
517 indigenous ecosystems or indigenous biodiversity is reference in the provision.
518

519 But, I do think it would be beneficial to have a definition of restoration that
520 applies more broadly, just for clarity.
521

522 Chair: Thank you Ms Campbell. That was exactly the point I was wondering. You were
523 seeking that those words be deleted, but I wonder if it might be more helpful for
524 the changes you're seeking to actually retain those words, so then that
525 differentiation is made.
526

527 I've just had a quick look through the RPS. We might need to take a bit more
528 time to do this, but restoration does come up a lot as you have mentioned. There
529 will be instances where I think it's specific to indigenous ecosystems and other
530 times where it's broader. We'll probably just need to check in and maybe seek
531 Ms Guest's advice on making sure that there's nothing unintended. So basically
532 if restoration is mentioned and it's meant to be broader than just referring to
533 indigenous biodiversity, that that's captured properly.
534

535 Does anyone else have any questions for Wellington Fish & Game?
536

537 Thank you very much for your time and your very clear presentations. Really
538 appreciate how we got very quickly to the nub of the issue. Thank you very
539 much.

540
541 Malone: Thank you Madam Chair and Commissioners.

542
543 Chair: We'll have a short break and come back at 10.50am for the Royal Forest & Bird
544 Protection Society. Thank you.

545
546 [Break taken – 42.37].

547
548 **Royal Forest & Bird Protection Society**

549
550 Chair: Good morning. We are starting again after the morning break. Kia ora Ms
551 Downing, welcome back to Hearing Stream 6, Indigenous Ecosystems.
552 Welcome. Would you like us to introduce ourselves again, or are you
553 comfortable?

554
555 Downing: I'm comfortable. Thank you.

556
557 Chair: Thank you Ms Downing. We have also got the Reporting Officer Ms Guest here
558 as well. We've read your legal submissions, thank you very much for those. If
559 you could in particular focus on the areas where Forest & Bird are still seeking
560 amendments following the Officers' rebuttal version that would be helpful,
561 thank you.

562
563 Downing: Thank you Madam Chair. I do apologise. I have just sent in the last half hour
564 some speaking notes. These basically are doing just that – outlining where the
565 now issues remain for Forest & Bird. I don't think it's pertinent that they're
566 before you right at this moment. Just signalling that I have forwarded those.

567
568 In those I had the opportunity to listen in on some of the hearing yesterday, and
569 some of the discussion around the New Zealand coastal policy statements. Those
570 notes also add some commentary on that, in response to that, which I am hoping
571 there is time for me to talk to today.

572
573 Chair: Absolutely. Go for it. In the schedule we've got a good half an hour. Feel free
574 to take us through those notes in detail if you wish. The floor is yours.

575
576 Downing: Thank you Madam Chair.

577
578 The outstanding issues are narrowing.

579
580 Forest & Bird still has concerns with the explanations to Policies 24A to D, but
581 these could easily be rectified with some refinement.

582
583 Under the explanation to 24A still makes a reference to coastal environments
584 [00.45.00] and Forest & Bird seeks that that reference is deleted, or at the very least it's
585 made explicit that the National Policy Statement for indigenous biodiversity
586 does not apply within the coastal marine area.

587

588 The other matter pertains to the reference to individuals of threatened or at risk
589 declining taxa under the New Zealand threat classification system. Forest & Bird
590 appreciates that Appendix 1A which makes reference to those species has to be
591 considered as a minimum, but it does note that the subsequent clause (c) doesn't
592 make that reference as a minimum.

593
594 In any event, I think it's fair for a non-scientist to observe that threat statuses do
595 change, which can quickly lead to discrepancies between what is set out in
596 Appendix 1A and what's in the most recent New Zealand Threat Classification
597 System.

598
599 For plan efficiency and to avoid misinterpretation, Forest & Bird's preference is
600 till to refer to the source, being the New Zealand Threat Classification System
601 to avoid any of that future confusion.

602
603 The other outstanding matter is around Policy 24D. It is still inconsistent with
604 the terms of the New Zealand Coastal Policy Statement and National Policy
605 Statement for freshwater management. The example that I can give is where it
606 refers to both the operational and functional needs of electricity transmission
607 and renewables to occur in significant biodiversity or areas of significant
608 biodiversity. Whereas under the NPS-FM for example clause 3.24, that refers to
609 the loss of river extent and values, but it's only in reference to... that directs that
610 the loss of river extent and values is avoided, unless the Council is satisfied that
611 there is a functional need for the activity in the location, so it has a narrower
612 scope.

613
614 On that point Forest & Bird seeks that Policy 24D is constrained to terrestrial
615 biodiversity.

616
617 That leaves the outstanding matters and just some comments on the New
618 Zealand Coastal Policy Statement. I heard the *Port Otago* decision raised
619 yesterday.

620
621 In the speaking notes, and I am not sure if you have them before you, but I have
622 taken the excerpts or the references from the Supreme Court's decision to where
623 the Court stated that the directive nature of the Port's policy arises from the two
624 verbs to recognise something is required – so recognise and required taken
625 together. And, I make the point that parallel policy formulations aren't contained
626 in the National Policy Statement for electricity transmission, or the National
627 Policy Statement for renewable energies.

628
629 Then I listed to Counsel for Wellington Airport, where I don't think it was quite
630 said, but there was an insinuation that *King Salmon* no longer applied. I make
631 the point that the orthodox approach to interpreting policies, set out by *King*
632 *Salmon*, hasn't been overturned by *Port Otago*. I have quoted the excerpt from
633 *Port Otago* which confirms that.

634
635 The distinction in *Port Otago* was the upshot of the *Port Otago* decision is Policy
636 9 was found to have a directive character in the same vein as the avoid policies
637 under the New Zealand Coastal Policy Statement.

638

639 I would submit that the findings are distinguishable in terms of the scenario
640 around existing infrastructure, or Airport infrastructure, and the coastal
641 environment is it's distinguishable on the basis that we are simply not dealing
642 with a Port activity which has a functional need to occur in the coastal marine
643 area, in contrast to airports and roading.

644
645 [00.50.00]

646 Except where work is required and not merely desirable for the safe and efficient
647 operation of the Ports, the New Zealand Coastal Policy does not privilege
648 infrastructure activities in the coastal environment over the protection of Policy
649 11 values.

650
651 I also note that following the *King Salmon* decision the New Zealand Coastal
652 Policy Statement underwent a review in June 2017, but no changes followed
653 from that.

654
655 I also make the point that the existing infrastructure, such as airports in the
656 coastal environment, and any hypothetical scenarios around maintaining such
657 infrastructure, tend to be more of a consequentialist argument. There are I know
658 other policies under the NZCPS would also be engaged – for example, those
659 policies around coastal hazards, which would need to be considered alongside
660 sea level rise. There are considerations around managed retreat.

661
662 That's all I wanted to speak to. Thank you.

663
664 Chair: Thank you Ms Downing. That was very concise and clear. Thank you.

665
666 I was taking notes and I haven't read your speaking notes yet. Would you mind
667 just taking me through the relief you're seeking to Policy 24A. I'm sorry I
668 missed that. I am looking at your submissions, but I am just wondering if the
669 position has changed a bit in your speaking notes.

670
671 Downing: No it hasn't. Do you have 24A before you?

672
673 Chair: Yes.

674
675 Downing: Apologies if that wasn't clear. In the first paragraph of the explanation to 24A
676 and the second sentence, it notes that this policy applies to the use of biodiversity
677 offsetting, and biodiversity compensation to address the residual effects on
678 indigenous biodiversity and the terrestrial and coastal environments. Forest &
679 Bird's issue is around that reference to the use of offsetting and compensation
680 in coastal environments, particularly since the NPSIB doesn't extend into the
681 coastal marine area.

682
683 I appreciate that it is an explanation and when all provisions are read
684 cumulatively it's probably clear. However, a belts and braces approach: it would
685 be good if the explanation also reflected that.

686
687 Chair: That's useful. To just check that I understand: Table 17, the far right column,
688 this is in Appendix 1A, this is now setting out the limitations to offsetting
689 compensation in the coastal environment.

690

691 Should that column apply to the entire coastal environment or only the area
692 above mean/high water springs?
693
694 Downing: Above mean/high water springs is my understanding.
695
696 Chair: I might just look over at the Reporting Officer. Have I understood that right Ms
697 Guest?
698
699 Guest: My understanding is the NZPCS applies to the coastal environment. I would
700 actually defer to legal – I think that’s better. It’s broader than just the CMA.
701
702 Chair: I’m thinking completely out loud here Ms Downing, so please jump in if you
703 think I have got something wrong in my understanding.
704 [00.55.00]
705 Is it Forest & Bird’s position that Policy 11 NZCPS is strict avoid, doesn’t allow
706 offsetting compensation, so this table which has these are the limitations in these
707 particular habitats and environments – there are limitations or actually complete
708 restrictions on offsetting compensation, because of their threat classification or
709 critical status; but I’m still puzzled as to what the intent with Policy 24C then.
710
711 Policy 24C replicates Policy 11 of the NZCPS was my understanding.
712
713 Downing: That was my understanding as well.
714
715 Chair: Where in that column, just taking the first one as an example in that table, coastal
716 turfs or dune flax, and ‘yes’ is written in that column. Is the intention, doe that
717 yes indicate no offsetting compensation.
718
719 Guest: Yes, it indicates that those species meet the Policy 11A criteria in the NZCPS,
720 so it’s an avoid direction, NZCPS.
721
722 Chair: Thank you Ms Guest. Sorry, I think I was perhaps overthinking that. Does that
723 align Ms Downing with how you understand that table to work?
724
725 Downing: That does align thank you Ma’am. Our concern is more clarifying the application
726 of the policies.
727
728 Wratt: Just to see if I have got it, your main concern in this particular issue is the
729 inclusion of coastal in the explanation – 24A explanation, that second sentence
730 that reads “Policy applies to the use of biodiversity offsetting and biodiversity
731 compensation to address the residual adverse effects on indigenous biodiversity
732 in the terrestrial and coastal environments and aquatic offsetting. So your
733 position would be that coastal environments should be completed from there?
734
735 Downing: That’s correct.
736
737 Wratt: Because, under the NZCPS offsetting is not enabled in the coastal environment.
738
739 Downing: Yes, that’s correct.
740
741 Wratt: Thank you, that just clarifies that for me.
742

743 Chair: That far right column lists the particularly vulnerably threatened areas in the
744 coast where there is no offsetting compensation.
745

746 Wratt: I guess you could argue that that right hand column shouldn't be needed, because
747 there's no offsetting within the coastal environment.
748

749 Chair: Other than it has the purpose of identifying the particular habitats and species
750 that are 11A.
751

752 Downing: I guess the only difficulty is (and I will throw it in the works, and then I'll be
753 thinking about loud here to, so I'm loathe to give a definitive answer) but just
754 noting the other considerations, those species that won't just stay in the coastal
755 environment, so migratory birds. It would be Forest & Bird's position that they
756 would be off the table for offsetting, given if they engaged Policy 11A.
757 [01.00.00]
758 Just noting that migratory species can add a further consideration in the mix.
759

760 Kara-France: Thank you for your presentation today. It's much appreciated. Just in reference
761 to the statement that you made regarding flight of migratory birds, for example,
762 from a mātauranga Māori perspective those birds have whakapapa links to those
763 specific areas where they nest. For example, the Titi will fly to South America
764 and they will come directly to their nest that they were born, because they have
765 whakapapa links to that particular nesting area and that particular biodiversity
766 area. All those other species within that space or site, indigenous biodiversity
767 area, they whakapapa together and they have an interconnectedness to each other
768 through whakapapa. This is a mātauranga Māori perspective concerning
769 indigenous biodiversity. Is that your understanding?
770

771 Downing: Yes, that is my understanding. I do appreciate we're working in western
772 constructs, but there are parallels with the whakapapa links and connections that
773 we see. I guess you would take a strict interpretation of the NZCPS in so many
774 situations and policies intertwine and we are often dealing in scenarios where
775 we are not just looking at one species, but looking at how their habitat will also
776 engage other NZCPS policies. I don't think I'm making much sense, but my
777 short point is I understand your point.
778

779 Kara-France: Thank you. I only draw focus to a particular whānau of bird species, indigenous
780 species, the Tītī, but in regards to the indigenous bird species who do come from
781 Aotearoa, they have the same circumstance – the whakapapa from here, they
782 may take flight to the rest of the world, which is Papatūānuku and then they will
783 return directly to the nest that they were born in. They contribute to that
784 indigenous biodiversity ecosystem as a whakapapa whānau and hapū. Kia ora.
785

786 Chair: Ms Downing, I would like to think more or have a discussion about the pathways
787 provided for infrastructure. In your legal submissions, you say that the policy
788 gap that's left by the NPSIB, you can't oust the role of s.6(c) and what has
789 happened here is the NPSIB provides an exemption and the Officer's report talks
790 about how that gap was basically filled or the direction was set in the draft NPSs
791 for transmissions and renewables but they were never finalised and gazetted;
792 essentially picking up those provisions and recommending that they go into
793 proposed Change 1.
794

795 If I understand your view correctly, you're saying that's not actually permitted
796 because of the operation of s.6(c) and that leaves a gap which you could then fill
797 through a Part 2 analysis?
798

799 Downing: Yes, that's exactly right. I understand that this was meant to work once that gap
800 was filled with the new National Policy Statements, but in the interim it is this
801 large lacuna, for want of a better description, and I think it's completely lawful.
802 This a situation where we do need to go to Part 2 to fill that gap.
803 [01.05.10]
804

805 Chair: Didn't the Supreme Court though in the *Port Otago* case say where the
806 opportunity is there for a high level policy document like the RPS to try to
807 reconcile. I guess it was talking about reconciling competing national direction,
808 rather than this is sort of saying how can you actually reconcile 6(c) and s.7?
809

810 It's not quite the same point, but I guess I'm just saying there is an opportunity
811 in the RPS to try to look at those competing issues, values and try to bring them
812 together or reconcile them.
813

814 Downing: Yes, I would agree with that. Forest & Bird's point is just that it needs to be in
815 that process, that reconciliation still needs to be consistent to give effect to the
816 terms of the New Zealand Coastal Policy Statement and the National Policy
817 Statement for freshwater management.
818

819 Chair: Is it Police 9? While there is something quite specific for port infrastructure,
820 your view is that there isn't anything that is so enabling in the NZCPS for other
821 infrastructure?
822

823 Downing: That's correct.
824

825 Chair: You've got that seek to avoid in the NPW-ET and we've got Transpower
826 appearing tomorrow and they'll probably talk about that some more.
827

828 There are conflicting or competing tensions and the RPS does have a role in
829 trying to resolve them.
830

831 Downing: Yes, I whole-heartedly agree with that. Just on that point, in terms of gap filling
832 and looking to Part 2 where an instrument, where a national direction leaves a
833 gap, I did come across there is a specific provision that does say that nothing
834 prevents the Council from implementing the Council from implementing its s.31
835 functions.
836

837 Chair: In the NPS-IB?
838

839 Downing: That's right. So 3.12 – nothing in this part limits a local authority's functions
840 and duties under the Act in relation to indigenous biodiversity.
841

842 Chair: Thinking about infrastructure, there remains issues for you, for Forest & Bird
843 about the pathways that the Officer recommends for transmission and
844 renewables. Then there's also this issue, if you heard Wellington Airport
845 yesterday, where they're saying they don't have an NPS or draft NPS, but they
846 have got existing infrastructure in the coastal environment. They've got things

847 like a seawall that are going to need to be maintained. Work they might need to
848 do on that seawall might have unintentional impacts on kelp, which could be
849 listed as an 11A species – I’m not sure if that’s the right term for kelp.

850
851 They didn’t know if the kelp that’s mentioned in Table 17 is or is not in the
852 coastal environment where the seawall is, but they said it would be problematic
853 if they had to work on that seawall and they couldn’t because it would impact
854 the kelp and no offsetting or compensation was possible. It was a strict avoid.

855 [01.10.00]

856 Sorry, that was a long way of setting out the issue that they talked to us about
857 yesterday. Is there any leeway in your view recognising existing infrastructure
858 of regional importance in these provisions; or is it still, if you’re triggering, if
859 you’re engaging Policy 11 it's a strict avoid?

860
861 **Downing:** Yes, I agree with the latter, where Policy 11 is engaged that more strict
862 interpretation is required; but also noting the Supreme Court’s comments in *King*
863 *Salmon* around minor transitory effects being allowed. I guess then in that
864 situation of the kelp, the question, I suppose it's not going to be a transitory effect
865 if it's permanently removed.

866
867 It will come down the context and extent of kelp being removed and whether
868 that falls within the qualifiers?

869
870 **Chair:** We all I think acknowledge that it was theoretical because we didn’t know if
871 Policy 11 was an issue for them, for this work, but they did say that they would
872 look into that and come back if there was more information they could give on
873 that.

874
875 That’s a good point about there being that recognised exemption for minor and
876 transitory effects.

877
878 **Downing:** I guess the other hard thing about the hypotheticals too is I understand there
879 might be recreational effects with that seawall in that area near a surf-break. I
880 appreciate it's not a surf-break of national significance, or one of the listed
881 nationally important surf-breaks. I don’t really deal in that space of the NZCPS,
882 but that also triggers and avoid policy.

883
884 Like I mentioned briefly earlier, there are provisions around coastal hazards.
885 Again I don’t know the specific facts, but I suppose it's fair to say that sea level
886 rise will be an important factor to consider going forward.

887
888 I guess considered cumulatively there are those other policy considerations that
889 might tend to negate that further work. Again, dealing in hypotheticals I can’t
890 give a definitive answer.

891
892 **Chair:** Or, conversely it could enable it because if it's maintaining a seawall which
893 provides mitigation protection from natural hazards, I guess it will also mainly
894 be protecting the airport. If it's also having that other purpose then it could also
895 be enabled. We looked at those provisions in the climate change topic.

896
897 Any further questions for Ms Downing?

898

899 Wratt: Would you be open to another provision, might be a 24E that would be more
900 specific around I guess infrastructure with a functional need in the marine
901 environment?
902

903 Downing: I guess it would depend on what it looks like. That's not helpful, but provided it
904 was still faithful to the avoid directives and didn't provide for offsetting and
905 compensation, then yes we would be comfortable.
906

907 Wratt: You did comment earlier I think in relation to *Port Otago* that that isn't entirely
908 applicable because the Port has to operate in the marine environment. But, I
909 guess you could argue that Wellington Airport doesn't have a lot of choice either
910 in terms of what its location is and having to protect its infrastructure in the
911 context of its proximity to the marine environment.

912 [01.15.00]

913 Downing: I guess until they have their own NPS providing that equivalent direct wording
914 Forest & Bird wouldn't support in enabling provision for that existing
915 infrastructure.
916

917 Wratt: Thank you for that.
918

919 Chair: Thank you very much Ms Downing. We really appreciate Royal Forest & Bird
920 Protection Society's input into these provisions. Obviously you work on these
921 provisions throughout the country, so having all of that knowledge has been
922 really helpful for us in assessing these provisions too. Thank you for your time
923 and your submissions. We might see you for the final hearing in a couple of
924 months.
925

926 Downing: Thank you Madam Chair and thank you Commissioners. Sorry, I always have
927 to say, sometimes I feel like the 'fun Police' coming to these, but I think they're
928 still important matters.
929

930 Chair: Not at all. Thank you.
931

932 Downing: Thank you very much. Kia ora.
933

934 **Wairarapa Federated Farmers**
935

936 Chair: Kia ora. We've got Wairarapa Federated Farmers online.
937

938 Kia ora Mr Matich. How are you?
939

940 Matich: Kia ora. I am fit and well thank you. I am just waiting for Liz McGruddy to join.
941 Chair: Just while we are waiting Mr Matich, we have read your evidence. We have Ms
942 McGruddy's speaking notes. Obviously Wairarapa Federated Farmers
943 submission.
944

945 Matich: I'm happy to answer questions you may have now if you prefer to turn the order
946 of dealing with me around, to save time.
947

948 Chair: We can wait a minute for Ms McGruddy. Feel free if you want to see if she is
949 far away.
950

951 Chair: Kia ora Ms McGruddy, welcome.
952
953 McGruddy: Apologies Commissioner, just a little delay connecting.
954
955 Chair: No problem at all. We have read your speaking notes. Thank you very much for
956 those, and Mr Matich's evidence. If you would like to take us to the key points
957 in particular – the areas where you are still seeking relief in light of the Officer's
958 rebuttal provisions. I will pass over to you. Thank you.
959
960 McGruddy: Thanks very much. Good morning Commissioners. Before we got to areas of
961 disagreement, I would like to just take a couple of moments to record areas of
962 agreement. We have looked at the rebuttal and I have been tuning into some of
963 the hearing over the last day or so.
964
965 Starting with key areas of agreement, and perhaps starting from the top, and does
966 New Zealand have special unique indigenous biodiversity? Yes. We agree.
967 [01.20.00]
968 Is there a lot less than since humans arrived in New Zealand? Yes, we agree.
969
970 Are we broadly maintaining the bits that we have got left? We have provided
971 data about indigenous land cover that indicates yes we are broadly maintaining.
972 The S.42 Report in fact seems to agree with us on that. Their key concern was
973 the scale of loss since humans arrived more so than any trends over the
974 contemporary period.
975
976 Accepting that there is a lot less since pre-human times, are there ongoing
977 pressures on our indigenous biodiversity? Yes, we agree. It wasn't just human's
978 that arrived, it was a whole raft of rats, dogs, pigs and old man's beard and all
979 the rest of it.
980
981 If we might agree that broadly we are maintaining in recent decades, then is the
982 real challenge in front of us about restoration, about really seriously looking after
983 those bits that we have got left; knowing that we can't just lock them up and
984 leave them, because there are those ongoing pressures from the rats, old man's
985 beard and so forth, and they need active management if we don't want them
986 going backwards.
987
988 Is the intent to achieve restoration through regulation? Ms Guess was very clear
989 on this point yesterday, that no, the intent is not to achieve restoration through
990 regulation. We agree.
991
992 Is the intent rather to achieve restoration through partnerships? The NPS-IB is
993 pretty strong on partnerships. GW, Ms Guest, yesterday I think was pretty clear
994 on this point. We agree. This partnership concept, we've spoken to this I think
995 at all the hearing streams so far, and we can repeat it again.
996
997 In terms of indigenous biodiversity broadly there's a big chunk on the public
998 estate, and it's probably fair to say that everybody chips in to supporting the
999 effort and the active management on the DoC estate through taxpayer funding
1000 for DoC. And, there's a big chunk on the private estate. There's perhaps
1001 something around a quarter of native vegetation is on farmland in New Zealand,
1002 around three million hectares. That partnership concept perhaps we might agree

1003 that it's something along the lines of those three grey funding partnerships
1004 between central government, local government and locals.

1005
1006 Could the RPS be clearer on that intent that restoration is not regulation? We
1007 think it could be and we do have some thoughts on how that could be made
1008 clearer.

1009
1010 Is restoration a big job? Yes, I think we can all agree on that and it's ongoing
1011 because the pests and the weeds don't go away.

1012
1013 Do we need to be strategic and prioritise 'best bang for buck' – and I'm taking
1014 words there from Ms Guest yesterday? Yes we agree. That's a strong area of
1015 agreement for us.

1016
1017 Does it make sense to prioritise the special bits, the rare and threatened bits?
1018 Yes, that's what the NPS-IB recommends. That's what Policy IE.3 is
1019 recommending and we agree.

1020
1021 Does it make sense to look for the win-win opportunities? Again, picking up on
1022 Ms Guest yesterday, yes we agree. As part of that, does it make sense for us to
1023 develop a regional inventory of offsetting opportunities? Yes, we agree.

1024
1025 So we have a lot of common ground. Now I am going to turn to areas of
1026 disagreement. These are roughly in order. I am going to start at the top with the
1027 objective of the NPS-IB. It's a very clear objective. It's in a couple of key parts
1028 and I'm paraphrasing. It directs us to look after our indigenous biodiversity
1029 while providing for social, economic and cultural wellbeing.

1030 [01.25.00]
1031 Should that clause 4, about providing for social, economic wellbeing, should
1032 that be left right out? No. We do not agree.

1033
1034 Is it sufficient that there's a few other bits and pieces in the RPS about RSI and
1035 a couple of little exemption pathways? Is that sufficient to substitute for not
1036 including clause 4? No. We do not agree that those other little bits and pieces
1037 substitute for the centrality of that clause in the NPS-IB objective. It should be
1038 informing all the provisions which flow from that objective. It should be
1039 informing that strategic prioritisation exercise. It should be informing the debate
1040 for example about offsets and net-gain and whether it's ten percent or more or
1041 less.

1042
1043 We do not agree that offsets that offsets should be ten percent or more. The NPS-
1044 IB provides for net-gain. We think that's where the position should be struck in
1045 the RPS.

1046
1047 We do not agree with Policy 24A Appendix 1A limitations on offsets. And, I'm
1048 just going to briefly say here, I actually find that whole proposal very, very
1049 confusing and baffling. I think we are shooting ourselves in the foot, particularly
1050 in the context that we agree with Council that priorities for restoration should
1051 include all those rare and threatened systems.

1052

1053 We do not agree with the timeframes that have been set out in Policy 23 and 24.
1054 This is addressed in the evidence from Mr Matich, and he's happy to be speaking
1055 more to that.

1056
1057 A couple of little smaller points:

1058
1059 Consideration policies. This has come up in previous hearing streams. We have
1060 spoken to it. Our position broadly on consideration policies, and there's a couple
1061 here in HS.6, IE.2 and IE.2A, that those consideration policies appropriately
1062 direct regional plans and they should not include resource consents. Our position
1063 on that stands in respect of the ones here.

1064
1065 A tiny thing: there was a comment yesterday that the operative RPS only
1066 addresses significant biodiversity. I don't agree with that. We've got Policy 61
1067 and Policy 64 and there's various methods, all of which of course flowed through
1068 to the NRP. There's a whole raft of rules and methods which don't just deal with
1069 significant.

1070
1071 In summary, we have a lot of agreements, a lot of common ground. We do still
1072 have significant areas of difference. We have set out the reasons and some of the
1073 remedies, or our suggested remedies in the hearing statement in our submission
1074 and in the evidence from Mr Matich, and we are very happy to speak further to
1075 those.

1076
1077 Open for questions.

1078
1079 Chair: Thank you very much Ms McGruddy. Very clear and to the point, as with
1080 previous hearing streams, so thank you very much for that.

1081
1082 I will see if the other panel members have questions.

1083
1084 Maybe I will start.

1085
1086 The relief you're seeing on Objective 16, and I am looking at the words at the
1087 end there, "in partnership with the community" isn't that already provided for
1088 through the methods, like Method IE.4...

1089
1090 Matich: Method 32?

1091
1092 Chair: Thank you Mr Matich, 32 I think and also IE.4. If they are already providing this
1093 [01.30.00] objective is implemented through partnership, are those words needed at the end
1094 there in Objective 16?

1095
1096 McGruddy: A couple of thoughts here Commissioner.

1097
1098 Firstly, that partnership principle is fairly central in the NPS-IB; and secondly,
1099 it goes to that point that Ms Guest was raising yesterday that the intent of
1100 restoration is that it is not a regulatory activity, it's a partnership one.

1101
1102 Pam had to go to some trouble yesterday to explain that that's the intent. Part of
1103 the reason I think that she was having to explain that's the intent, is because it's
1104 actually not clear in the document that's in front of us.

1105
1106 Objective 16 is in two parts. I will go to that second part Commissioner
1107 Nightingale, which is that last bit that says, “and where appropriate enhanced
1108 and restored” and I’m recommending here in partnership with the community,
1109 where appropriate, as I understood from the conversations yesterday, the intent
1110 there is that that links across to the method for that strategic prioritisation
1111 exercise.

1112
1113 It also links to the clear intent that Council have, that that strategic restoration,
1114 identify the priorities and then proceed in partnership and not in regulation, that
1115 the intent is not currently clear.

1116
1117 Further to what you are looking at there in the hearing statement, I’m going to
1118 suggest that it perhaps might be helpful to consider putting in the explanation to
1119 Objective 16 that restoration is intended as a non-regulatory exercise (picking
1120 up on that thing about where appropriate) and that it's intended that it will be
1121 prioritised in accordance with the method further down.

1122
1123 It's about having that clarify in Objective 16 about the intent for restoration to
1124 be non-regulatory, but instead a partnership gain.

1125
1126 Chair: Thank you. We’ll definitely consider that as we work through these provisions.

1127
1128 Wratt: Can I just explore that a little bit further. Certainly that is an objective. Some of
1129 what you’re proposing seems to me is actually getting into the methods, whereby
1130 you deliver that objective; and the partnership aspects are certainly there in some
1131 of the methods.

1132
1133 The other aspect of not being regulatory, I guess I would just have a concern.
1134 Yes the objective is that it needs to be done by partnership and there’s a lot about
1135 partnership in this Regional Policy Statement generally. But, there are some
1136 cases where that regulatory backup is needed.

1137
1138 [01.35.00] I think one of the messages coming through the Council has been that whilst
1139 there has been a requirement to do some of these things for some years prior to
1140 the NPS-IB, they haven’t actually happened. So to have such an explicit
1141 statement that this is not regulatory, I guess there’s a little bit of concern.

1142
1143 McGruddy: If I might distinguish Commissioner, Objective 16 is in two parts. Broadly we’ve
1144 got the maintenance, be it Objective 16 or be it the NPS-IB. If we might just step
1145 away from the plate briefly and distinguish between maintenance and
1146 restoration.

1147
1148 I’m not questioning that there is a regulatory component to biodiversity
1149 management in New Zealand. What I am seeking to clarify in the RPS is that
1150 the restoration component peeling back five hundred years of human settlement
1151 is non-regulatory.

1152
1153 If I just might very briefly speak further to that.

1154

1155 For the bits that we have left, a big chunk on the DoC estate, another big chunk
1156 on private farmland, it goes back to that point I made earlier that we can't just
1157 lock them up and leave them. You can't just wrap legal protection around them.
1158
1159 They require active management. There's a couple of examples in the hearing
1160 statement, drawn from a Council report, about [01.37.28] forest in the region
1161 and the key threats. In one case it was old man's beard, in the other case it was
1162 deer and goats.
1163
1164 We can any number of regulatory protections around those systems and those
1165 are in place, but if we really want to look after them, and if we really aspire to
1166 restoring them, it's about active management. That's where the money game
1167 comes in. Again Ms Guest yesterday, when she was speaking to that method
1168 about strategic prioritisation she made the point it's a big job – we agree. We've
1169 got to be smart and strategic about where we invest our collective resources,
1170 public and private, for the best bang for buck. That ambitious programme of
1171 active management, that's already happening – as we all know, there's oodles
1172 of examples of fantastic work that's happening on farms in partnership with
1173 Council, on iwi land. We all know oodles and oodles of examples, so it's not a
1174 ground-zero game.
1175
1176 We support. If I could just emphasise again: we support Council on this. We
1177 support Council clarifying that ambitious restoration vision is not going to
1178 happen by regulation; it absolutely has to happen by us agreeing the priorities
1179 and then collectively hooking in.
1180
1181 The bit that I am just wanting to emphasise is that it shouldn't rely on Ms Guest
1182 explaining that to the panel yesterday. It should be front and centre, very
1183 transparent and clear in the RPS.
1184 Wratt: I don't disagree with anything that you have said, except that I'm not sure in the
1185 objective is the place to put whether something is regulatory or non-regulatory.
1186 [01.40.00]
1187 It seems to me that's what you address in the terms of your level of policies and
1188 methods. Certainly we hear what you're saying and we'll certainly be
1189 considering that.
1190
1191 Chair: I agree. To me it still feels like we're all saying the same thing. There are no
1192 provisions that I have identified that require restoration. Certainly provisions
1193 that note it's important and that it has to happen, together with tangata whenua
1194 and others in the community. I'm still not sure Ms McGruddy, just staying with
1195 the objectives, the relief that you're seeking – I can't see first how that supports
1196 your view that restoration is non-regulatory; and secondly, I think the provisions
1197 already say that this work can only happen through relationships and
1198 partnerships. We will definitely keep reflecting on it.
1199
1200 Match: Can I add something in here, that I think has been missed?
1201
1202 Chair: Please.
1203
1204 Match: The operative Objective 16 was about maintenance primarily of significant
1205 biodiversity values. The new proposed Objective 16 is about significant
1206 ecosystem functions and services which is wider than s.6 significant habitats,

1207 indigenous fauna etc. Is not just about maintenance of those ecosystem functions
1208 and services; it's about protecting and enhancing them.

1209
1210 This is a more stringent objective than the operative objective was, and the
1211 policy methods that give effect to that are district plan implementation and
1212 regional plan implementation, which from a planning perspective equates to a
1213 range of things, including through resource consents. That's I think where the
1214 concern of Wairarapa Federated Farmers is, and how this objective is going to
1215 be implemented.

1216
1217 The other thing that I wanted to add here, while I'm talking about this objective,
1218 is that Mr Wyeth in his rebuttal statement on page-15, paragraph 48, presumes
1219 that I'm talking about the wider issue of timeframes for giving effect to this
1220 under Part 4.1, sub-part 2 of the NPS-IB which talks about an eight year after
1221 commencement date for the wider things that the NPS-IB requires effect to be
1222 given to, versus the shorter timeframe for the narrower focus on SNAs which is
1223 in Part 4.2.

1224
1225 My opinion is that ecosystem functions and services, and biodiversity values are
1226 wider than SNAs, because if you look at Appendix 1A of the RPS it includes
1227 species and ecosystems, which could be existing outside significant natural
1228 areas.

1229
1230 Therefore, my view is that the correct timeframe to apply the NPS-IB is eight
1231 years, i.e. 2031, as opposed to Mr Wyeth's view that it's 4.2 which is about
1232 significant natural areas.

1233 [01.45.00]

1234 If you put that on top of the fact that Objective 16 focus is now protecting and
1235 enhancing, if you're going to do that in a short timeframe, that's going to be
1236 more difficult in partnership with the community than if you're going to give
1237 them a bit longer to do it.

1238
1239 Chair: Thanks Mr Matich. I just note that some of that text that Officer is supporting
1240 some different wording there now; so deletion of ecosystem function and
1241 services for instance, and of course the enhancement and restoration is where
1242 appropriate.

1243
1244 But, I take your point about the timing. Quite complicated provisions there
1245 around timing, but we we've listened and we'll take that on-board.

1246
1247 We might just have a couple of minutes left for any questions on the policies
1248 that Wairarapa Federated Farmers, the changes that they're seeking.

1249
1250 Ms McGruddy, I understand the point that you're making, that the change that
1251 you're making in Policy IE.3, and we did discuss this with Mr Wyeth yesterday,
1252 that is including those words, the fourth limb of the objective, providing for
1253 wellbeing.

1254
1255 Nobody goes out to impact biodiversity unless they're trying to do something –
1256 carry out some activity or build something. I guess the benefits or the value of
1257 that activity itself isn't that adequately considered as part of the s.104 consenting
1258 process?

1259
1260 McGruddy: I'm sorry Commissioner, what provision are we on?
1261
1262 Chair: The relief you're seeing to Policy IE.3. Just the addition of those words "while
1263 providing for social, economic and cultural wellbeing." I'm just saying, isn't
1264 that always going to be something that you would factor in as part of your
1265 consent application?
1266
1267 McGruddy: Policy IE.3 is the one that's all about strategic targets and priorities.
1268
1269 Chair: Sorry, I might have got the wrong provision there. Sorry, Ms McGruddy, I think
1270 I was meaning IE.2A. It's the same words but different provision.
1271
1272 McGruddy: This goes directly back to the NSP-IB. The objective of the NPS-IB. We've just
1273 had a conversation, in particular clause 4 of the objective of the NPS-IB
1274 providing for social and economic wellbeing.
1275
1276 We've just had a conversation about Federated Farmers recommending that that
1277 is a central clause in the objective of the NPS-IB and it should be properly
1278 included and reflected as a central clause in the objectives of the RPS. The panel
1279 are probing us as to whether it's necessary to do that in the RPS objectives, in
1280 [01.50.00] part because there is policies and other provisions that can achieve that same
1281 job without tutuing with the objectives.
1282 So, because that provision about while enabling social and economic wellbeing
1283 is at the top end of the NPS-IB in the single objective of the NPS-IB, we are
1284 recommending firstly that it would appropriately be included in the RPS
1285 objectives and additionally that it be reflected in the provisions including these
1286 policies, both IE.2A and IE.3.
1287
1288 The reasoning for suggesting that the policies be amended as well as mostly
1289 importantly the objectives, is partly because Council's response in right of reply,
1290 in rebuttal etc., Council's reluctance to include that very central and clear
1291 element of the NPS-IB, the reason is along the lines of, "Yes, but we've got
1292 these bits that are RSI and we've got a couple of little pathways, and they're not
1293 treating it as being a central element informing implementation of the NPS-IB
1294 as a package.
1295
1296 So that's the reason for the suggested amendments of the policies, as well as the
1297 objective.
1298
1299 Chair: You're seeking that the balance that's in the objective is reflected in the
1300 provisions?
1301
1302 McGruddy: Correct.
1303
1304 Wratt: A different question around the wording on page-4 and page-5 of your hearing
1305 statement. You propose some rewording in Objective 16A and in Policy IE.3
1306 which is very similar. The region's indigenous biodiversity is maintained and
1307 where appropriately enhanced and restored.
1308

1309 Then you are saying you would like to see deleted, “to a healthy functioning
1310 state improving its resilience to increasing environmental pressure, particularly
1311 climate change.”
1312
1313 In hearing what you have said to us so far, my take is that you’re accepting that
1314 we do have issues with the healthy functioning state of our biodiversity, but you
1315 are wanting that deleted and then instead to say, “so that there is at least no
1316 overall loss in indigenous biodiversity.”
1317
1318 There is also the issue around social, economic, cultural wellbeing, which I think
1319 we have discussed. But, I guess I’m a bit bemused. Those are completely
1320 different concepts. The overall loss in indigenous biodiversity that is essentially
1321 an area as I read it, and that’s part of the issue. The other part of the issue is that
1322 we want these ecosystems to be in a healthy functioning state.
1323
1324 Do you want to explain why you want that healthy functioning state removed?
1325
1326 McGruddy: Partly it relates back to the definition of restoration. I confess I have lost track
1327 of what definition of restoration are we using in the RPS. But, I am looking at
1328 the definition of restoration in the NPS-IB. The definition of restoration in the
1329 NPS-IB means the active management of modified or degraded habitats in order
1330 to maintain or reinstate the natural character, ecological and physical processes
1331 and cultural and visual properties.
1332
1333 Those additional words are actually inherent in the definition.
1334
1335 In part, it's because we tend to favour clear and crisp objectives and not wordy
1336 ones.
1337 [01.55.00]
1338 The second part of it, so that there is no overall loss, while providing for
1339 wellbeing etc. that’s linking obviously directly back to the NPS-IB objective.
1340
1341 Chair: Thank you very much Ms McGruddy. We have come to time. We are just a bit
1342 over. We might have to leave it there. That’s been very helpful. Thank you again
1343 for your speaking notes, and Mr Matich for your evidence as well.
1344
1345 Thank you for joining us again online. We might see you in the final hearing
1346 stream in a month or two.
1347
1348 Matich: Thank you.
1349
1350 McGruddy: Thanks very much panel.
1351
1352 **Rangitāne o Wairarapa**
1353
1354 Chair: We have Rangitāne o Wairarapa.
1355
1356 Kia ora Ms Burns, kia ora Ms Craig.
1357
1358 Burns: Kia ora.
1359
1360 Chair: Is Ms Craig with us as well?

1361
1362 Burns: She seems to be online.
1363
1364 Craig: Yes, I'm here.
1365
1366 Chair: Kia ora. Tēnā koe welcome. Thank you very much. We have your evidence.
1367 Would you like us to introduce ourselves again? We know this is not your first
1368 time presenting.
1369
1370 Craig: Only if you want to. I don't want to take that mana away from yourselves if you
1371 want to.
1372
1373 Chair: Commissioner Paine would you like to do an introduction.
1374
1375 Paine: Tēnā kōrua. Ko Glenice Paine tōku ingoa. It's good to see you both again.
1376
1377 Kara-France: Āe, tēnā kōrua. Ngā mihi, ngā mihi, ngā mihi. Ko Commissioner Kara-France
1378 ahau. Welcome. Nau mai haere mai.
1379 Wratt: Kia ora Commissioner Gillian Wratt. Welcome back to the hearings.
1380
1381 Chair: Ko Commissioner Nightingale ahau. Thank you very much.
1382
1383 We'll pass over to you.
1384
1385 Craig: Mō taku hē that I couldn't be in there. I have managed to catch Covid this week.
1386 It's ironic Whaea Gillian that while you're in the tari this time we can't be. Heio
1387 anō, maybe at the last hearing we'll be able to meet face-to-face. Ka pai.
1388
1389 Mai ara rā, mai ara rā. Mai ara rā te rangi i runga nei, mai ara rā te papa e raro
1390 nei. Mai ara rā Te Kāhui Ariki, Te Kāhui Tipua, Te Kāhui Tauira. Tuku ana,
1391 tuku ana. Tuku ana te reo kia rere. Tuku ana te kupu kia taka. Tuku ana te take
1392 kia mau ū e hā, ū e hā. Ū e hā a Nuku, ū e hā a Rangi. Ū e hā Tāne-nui-ā-rangi,
1393 Tāne Whakapiripiri, nāna i toko te rangi kia rongō nei, kia tū hāhā, kia tū kei ana
1394 rangi, tū kei ana nuku. Ka tangi te hau, ka mātao, ka ao, ka awatea he ao mārama,
1395 tīhei mauri ora.
1396
1397 I am going to share a story of something, or a few stories of something that has
1398 happened in the past six months that I think is appropriate for the hearing today.
1399
1400 Our tupuna Tāwhirimatea Tawhao Ngātuere has been immortalised in a
1401 whakapakoko that surrounds our marae at Pāpāwai. Due to the elements that
1402 whakapakoko has degraded and we as a whānau decided a few years ago to bring
1403 our tūpuna pou down, our uncle has been on the search for an appropriate rākau
1404 or a tree to help support us to carve a new pou.
1405
1406 I received a call late last year from him. The conversation he shared with me
1407 was that while walking in the park on Kuratawhiti whenua, that he observed a
1408 tōtara tree that was near the end of its life.
1409
1410 When I asked him how he knew that, he shared with me the signs that he looked
1411 for to know that that tree needed to come down. Something that is not shared too
1412 often in this modern world where trees come down prematurely too often is that

1413 trees do not live forever, but when it is their time it is best to bring them down
1414 and honour them as best we can. That is part of listening and living harmoniously
1415 with taiao.

1416 [02.00.00]

1417 We unfortunately are not able to cut the tree down ourselves, so we had to
1418 approach our District Council. They brought in a crew who are not culturally
1419 trained, and while we did a karakia before they proceeded they chopped down
1420 the tree. All was fine, until they realised that a baby ruru was inside the tree.

1421
1422 In short, ruru are a taonga to us. To lose a baby ruru is senseless as this an even
1423 a bigger cost. Department of Conservation were called in and asked to bring to
1424 the District Council more training for the contractors about how to check before
1425 bringing a tree down. Unfortunately though, this is a Pākehā process to a te ao
1426 Māori world. We need to mourn that ruru pēpi from te ao tūroa. We need to do
1427 karakia to inform the parents of the ruru that the pēpi is no longer with us. We
1428 need to whakawātea te ao tūroa and clear the hara that has been created from
1429 these actions.

1430
1431 These actions are not on a list somewhere at councils and ministries. This isn't
1432 included in their processes. These are actions we have to take as kaitiaki and
1433 they are contextual to each event. These are the actions that we need to
1434 undertake.

1435
1436 Indigenous biodiversity is our whakapapa. We cannot do anything about us
1437 without us and we should be leading kaupapa in this space.

1438
1439 Recently we found out that Greater Wellington Regional Council were doing
1440 projects and contracting people to investigate pekapeka in our region. Nowhere
1441 had our people been engaged throughout this process. Our pekapeka again are a
1442 taonga to us. The removal of mātauranga Māori from any kaupapa planning or
1443 design is only looking at part of the problem.

1444
1445 For our taonga we have thousands of years of observations that we hold within
1446 our mātauranga. Science is only providing some answers in the past few years
1447 and it is an insult to exclude us from these spaces.

1448
1449 One hundred and eight four years ago was the best time to start protecting our
1450 taonga and ensuring our indigenous biodiversity is strong; but in the absence of
1451 that today is the best time to start.

1452
1453 The sooner we imbed kaupapa like this into these policies and strategies the
1454 sooner our mokopuna will realise the benefits of the mahi we do today.

1455
1456 Just yesterday I read a report from the Greater Wellington Regional Council
1457 entitled 'Cyclone Gabrielle Summary' in which it talks to the impacts that that
1458 cyclone had in our region, in the Wairarapa. Nowhere in it did it mention
1459 indigenous biodiversity. Nowhere did it mention mātauranga Māori.

1460
1461 See, we would be better placed to put our resources, our time and effort into
1462 indigenous biodiversity led by mātauranga Māori, than we would be to be
1463 funding flood management practices, or as they are now calling it, flood
1464 resilience.

1465
1466 The focus is on the wrong areas and we are continuing to perpetuate the
1467 detrimental thinking of what floods are.
1468
1469 I also note that people in groups will have us separated thinking that mātauranga
1470 Māori is quite different to farmers, horticulturalists. They are our community.
1471 We see our job as kaitiaki as protecting those within the wider community.
1472
1473 Indigenous biodiversity is imbedded in the DNA of our awa, our whenua and
1474 our āngi and it is what Papatūānuku needs to support the healing of herself. If
1475 we don't we will lose more than some native species, we will lose lives in the
1476 next cyclone and we will lose ourselves.
1477 I will now pass to Maggie Burns to continue our kōrero.
1478
1479 Burns: Thank you Amber. Tēnā koutou Commissioners. Thanks for having me back.
1480 Ko Maggie Burns ahau.
1481
1482 I have been asked to provide planning evidence on this matter on behalf of
1483 Rangitāne o Wairarapa.
1484
1485 I take my statement of evidence as read as usual, and just would like to reiterate
1486 some key points and respond to some things that were raised in rebuttal
1487 evidence. I will keep this quite brief but happy to answer any questions.
1488
1489 I note I am largely supportive of the recommendations in the S.42A Report
1490 including the indigenous ecosystem provisions in Change 1. I support the
1491 reasoning provided in the S.42A Report that there are clear legal requirements
1492 to the NPS-IB where practicable and within scope of submissions.
1493
1494 I also agree with replacing reference to Te Rito o te Harakeke throughout with
1495 the decision-making principles. However, I recommend some minor
1496 amendments to ensure the implementation and development of the local
1497 expressions are clear.
1498
1499 With regard to Policy IE.2 I note Ms Guest's support for proposed amendments
1500 to this policy including clarity in the chapeaux and amendments to the policy
1501 and definition to ensure the local expressions are given effect to one they are
1502 established.
1503 [02.05.00]
1504 I support these amendments as consistent with the recommendations and
1505 reasoning in my own evidence.
1506
1507 I acknowledge the comments made by Ms Guest in her rebuttal with regard to
1508 timeframes and SNA identification in Policy 23. While I understand this
1509 reasoning and acknowledge Method 23 which was raised in that rebuttal, I am
1510 still of the opinion that an earlier timeframe or more clarity on what 'as soon as
1511 practicable' means in this context would be appropriate given the urgency of
1512 managing indigenous biodiversity, and Ms Craig has spoken to that in a context
1513 with a little bit more detail.
1514

1515 With regard to Policy 24 in my evidence I disagree with the wording in the S.42
1516 Report that simply refers to clauses in the NPS-IB, NZCPS and RPS. I consider
1517 that this makes the policy redundant.
1518
1519 If the NPS-IB was to be amended or replaced this policy creates a gap which
1520 means the RPS does not sufficiently recognise and provide for s.6(c) of the RMA
1521 and other sections.
1522
1523 In this context I am supportive of the proposed amendments in the rebuttal
1524 evidence of Mr Wyeth, which essentially replicates clauses 3.10 and 3.11 of the
1525 NPS-IB. I consider this an appropriate interim response to giving effect to the
1526 NPS-IB.
1527
1528 Thank you again for your time. I will now pass back to Ms Craig to close our
1529 presentation.
1530
1531 Craig: One thing I will just touch on is, although we are pushing further for more action
1532 and more change, I guess the one thing around this is there was a lot of
1533 commentary that we should just get rid of indigenous biodiversity. I will applaud
1534 at least for keeping it in there. When I have originally started these hearings we
1535 talked about being brave and doing what is right for our mokopuna to come. I
1536 just want to say we will continue to push further, because there was some stuff
1537 that was signed up to as Te Tiriti o Waitangi that we appreciate the strong focus
1538 on indigenous biodiversity.
1539
1540 I am just going to close out and then we will ask if there were any pātai.
1541
1542 Tūtawa mai i runga, tūtawa mai i raro, tūtawa mai i roto, tūtawa mai i waho. Kia
1543 tū e te mauri tū, te mauri ora ki te katoa. Haumi e, hui e, tāiki e.
1544
1545 Chair: Thank you very much. Any questions?
1546
1547 Paine: Tēnā koe Ms Craig. I haven't got a question as such, just to say I found Appendix
1548 A in your evidence about te mana o te wai, the expression of te mana o te wai, I
1549 found that very useful; and also your objectives around the tikanga hapū for
1550 Rangitāne. It helps in interpreting and understanding your submissions. Thank
1551 you for that.
1552
1553 I think the planners evidence is quite clear for me thank you Madam Chair.
1554
1555 Wratt: No specific questions from me. Just to say thank you once again for your
1556 evidence and presentations to the hearing. Kia ora.
1557
1558 Kara-France: Ngā mihi, ngā mihi, ngā mihi. E te rangatira, e te iwi o Rangitāne o Wairarapa,
1559 tēnā kōrua. It is always a privilege to hear your submissions. Thank you. Your
1560 submissions and presentation has been heard. Kia ora. Looking forward to
1561 seeing you again.
1562 [02.10.00]
1563 Chair: Ms Craig, I can't quite put my finger on this quickly enough, but the Rangitāne
1564 o Wairarapa expression you have included in your cultural evidence, in the
1565 previous hearing stream, I think it was hearing stream five, when you came and

1566 spoken with us. If I remember correctly I think you had included an expression
1567 for Rangitāne o Wairarapa in your evidence then.
1568

1569 Is this one here for hearing stream six specific to the indigenous biodiversity
1570 provisions, or is it the same expression. I'm sorry if I am confused about that.
1571

1572 Craig: It's the same expression but I believe hearing stream five was about te mana o te
1573 wai.

1574 Chair: Yes.
1575

1576 Craig: Specifically that expression was for that, but because indigenous biodiversity
1577 incorporates everything we also included it to contextualise how we kind of see
1578 te mana o te wai.
1579

1580 There is a particular one in there that talks about the tinana or the hauora o te
1581 wai, so that links closely in to indigenous biodiversity to make sure that the
1582 whole whānau is healthy and sorted before are also addressing the health of our
1583 waterways.
1584

1585 Chair: Thanks for clarifying that.
1586

1587 The decision-making principles which are set out in the NPS-IB and are also
1588 incorporated through the Change 1 Provisions, they start out by saying the Māori
1589 intrinsic value and wellbeing of indigenous biodiversity is to be prioritised.
1590

1591 Then, in some of the methods it talks about the importance of giving local
1592 expression to those decision-making principles in implementing these
1593 indigenous biodiversity provisions. I guess I would just like for you to talk about
1594 how you would like to see that happen when you're working with the Regional
1595 Council in achieving the indigenous biodiversity objectives.
1596

1597 Craig: Maggie, do you want me to answer, or is that a 'you' question?
1598

1599 Burns: A bit of both I think. From the way I would see it, from a policy perspective at
1600 least is similar to what has happened in the NPS-FM with establishing those te
1601 mana o te wai expressions. But, certainly Amber if you have got some
1602 commentary on how you would like to see that done.
1603

1604 Craig: I can't remember the kupu that was used but the decision principles are more for
1605 an internal Greater Wellington Regional Council thing. It doesn't negate the fact,
1606 and we would see, that in mana whenua from around the motu, depending on
1607 where the kaupapa is, would be engaged heavily at the beginning as part of
1608 partnership, and that we can choose to co-design. But, I kind of saw those
1609 decision-making principles. We might have our own way in which we determine
1610 – we'll wānanga out with our whānau and make decisions based on that, and that
1611 won't fit within the decision principles. However, it doesn't stop Greater
1612 Wellington as an organisation engaging with us and reaching out.
1613

1614 There may be some stuff where we say from a mātauranga Māori perspective,
1615 and because indigenous biodiversity is in our whakapapa, it's vital that we have
1616 a mātauranga Māori only approach, or there may be some projects where we
1617 have mātauranga but also science sit alongside.

1618
1619 I think that's where that partnership and collaborating is really important.
1620
1621 Chair: Thank you.
1622 [02.15.00]
1623 Thanks very much. Just so I am clear on the further relief that you're seeking
1624 Ms Burns, I understand the timing point. Your view certainly as is reasonably
1625 practicable is that we need to be doing this quicker. I understand that.
1626
1627 Then, is there still outstanding relief? I appreciate there's a lot of provisions that
1628 you support, but are you still seeking relief on Policy IE.2?
1629
1630 Burns. No. I am supportive of what was provided in the rebuttal evidence from Ms
1631 Guest on that point, or on that policy.
1632
1633 Chair: I think Policy 23 you're also comfortable with?
1634
1635 Burns: Yes, Policy 23 is in reference to the timeframes and that would also push over
1636 into 24 as well, which I don't think I specifically mentioned in my evidence. I
1637 would certainly support that urgency throughout. Aside from that, I'm
1638 supportive of Policy 23. Then Policy 24 I am supportive of what is in Mr
1639 Wyeth's rebuttal. I think there's a little bit more work to do there generally on
1640 how that cross-referencing is going to work throughout the plan, [02.17.10] back
1641 to clauses in national policy statements.
1642
1643 However, in the interim, the approach that Mr Wyeth has taken in the rebuttal I
1644 am supportive of.
1645
1646 Chair: Thank you. Just to note in para 50 of your evidence, that point about if the NPS-
1647 IB changes those provisions are no longer there, and how does that work; and
1648 that point is addressed in the legal submissions from counsel for the Council.
1649 Their view is that it does still apply. It may be you may end up having to troll
1650 through the internet to find that particular version and that provision, but that
1651 application still applies basically, even if the NPS-IB changes.
1652
1653 I don't think I have any further questions other than to say thank you very much
1654 again for the time and preparing your evidence. We really appreciate it and it's
1655 really helped our understanding of the provision. Thank you.
1656
1657 Thank you for your time. Ms Craig, we do wish you a speedy recovery. Thanks
1658 very much for joining us when you're not well. We really appreciate it.
1659
1660 Craig: Ngā mihi koutou. Thank you. Ka kite.
1661
1662 Chair: Ka kite anō.
1663
1664 Thanks very much everyone. We will finish with a karakia Ms Guest. Thank
1665 you.
1666
1667 Guest: *Kia tau te manaakitanga*
1668 *Ki runga ki tēnā, ki tēnā o tātou*
1669 *Kia piki te ora, kia piki te māramatanga*

1670 *Kia hoki pai atu, kia hoki pai mai*
1671 *Tūturu whakamaua kia tīna*
1672 *Tīna, haumi e, hui e, tāiki e*
1673
1674
1675
1676 [End of recording 02.19.28]

Greater Wellington Regional Council

Transcription
Hearing Stream Six Indigenous Ecosystems
Day Three

SUBMISSIONS

Proposed Change 1 to Regional Policy Statement for Wellington Region

Date: Thursday 22nd February 2024

Location: Venue: Naumi Hotel, 213 Cuba Street, Te Aro, Wellington 6011

Hearing Panel: Commissioner Dhilum Nightingale (Chair)
Commissioner Glenice Paine
Commissioner Gillian Wratt
Commissioner Ina Kumeroa Kara-France

Hearing Advisors: Jo Nixon
Whitney Middendorf

1 Chair: Mōrena. Karakia tātou.
2
3 Guest: Ngā mihi o te rā ki te whānau e huihui nei.
4 Kia tau te rangimārie
5 Kia whakatapu tātou me ngā mea
6 E whakapono ana tātou
7 Haumi e, hui e, tāiki
8
9 Chair: Tēnā koutou katoa. Welcome. Nau mai haere mai ki te kaupapa o te rā.
10
11 Welcome to the last day of the hearing of submitters on Hearing Stream 6,
12 Indigenous Ecosystems.
13
14 **Hutt City Council**
15
16 We start with the Hutt City Council. Mr McDonnell welcome again. Would you
17 like us to do some introductions, or are you happy with who we are. Okay?
18
19 You will be familiar with Ms Guest who is one of the Reporting Officers for this
20 topic.
21

22 Probably don't need to cover health and safety either. We might just run through
23 some brief health and safety points before Transpower speaks, because I think
24 this is your first time.

25
26 We can probably just kick straight into it.

27
28 Mr McDonnell, thank you, we have read your evidence and of course the
29 Council's submission. If you are able to take us to the points where your views
30 differ from that of the Reporting Officers in their rebuttal evidence. Otherwise
31 we'll hand over to you. Thank you.

32
33 McDonnell: Tēnā koutou. Good morning. Good to see you all again. My name is Torrey
34 McDonnell. I have previously appeared before you on behalf of Hutt City
35 Council as well as Porirua City Council on other hearing streams. I am currently
36 working for Insight Resource and Environmental Consultants, and been
37 employed to provide this expert planning evidence for Hutt City Council.

38
39 I have produce a statement of evidence which you have read and provided
40 specific recommended changes to provisions in Appendix A of that statement of
41 evidence.

42
43 Just again for context, the Hutt City Council has recently consulted on a full
44 draft district plan with the aim of formally notifying it later this year. As such,
45 the timing and outcomes of Change 1 to the RPS are important to Hutt City
46 Council. Change 1 is unlikely to be operative when the District Plan is notified,
47 meaning a waiting exercise will need to be applied when considering the RPS
48 under s.74 and s.75 of the RMA.

49
50 As I mentioned before Hutt City Council seeks clear and concise RPS provisions
51 to provide some certainty for our Council and submitters.

52
53 I have reviewed the rebuttal evidence filed by Ms Guest and Mr Wyeth of
54 Greater Wellington and I would like to acknowledge your work in pulling these
55 reports and associated appendices together.

56
57 I have just got the provisions. I would like to talk to any differences in opinion,
58 just kind of sequentially working down from the introduction if that's okay.

59
60 Just quickly on the introduction, Hutt Council and I both consider that it should
61 be significantly reduced. However, it's been further lengthened in the s.42A
62 Report and the rebuttal. As I have outlined in previous hearing streams I think
63 any non regulatory content in the RPS should be as concise as possible. It's non-
64 statutory and it lengthens the plan, which makes it harder to find key
65 information.

66
67 I will just that there because it is non-statutory.

68
69 Getting into the objectives, I note the reporting officer has picked up in regard
70 to Objective 16A the point I raised in my statement that full restoration is not
71 practically feasible in many of our catchments, especially urban catchments, and
72 I support their recommended amendments to add the qualifier where appropriate
73 to that objective.

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[00.05.00]

Objective 16C in my statement I sought the deletion of this objective as it duplicates and objective within the NPS-IB. The Reporting Officer does not agree this objective should be deleted as its deletion would leave a gap in the framework of objectives.

On reflection, I agree that if the NPS-IB is repealed, as has been foreshadowed, it might leave a gap in terms of the policy line of sight to the regulatory methods, in particular Methods 53 and 54. So no longer pursuing the deletion of that objective.

Policies 23 and 24 continue to support the timeframes as set out in both the S.42A Report and the rebuttal version, for the reasons outlined in my statement. I support the changes recommended in the rebuttal version with regard to removing direct references to the NPS-IB from Policies 23 and 24 for the reasons I set out.

However, I want to note that in particular Policy 24 there's been a significant departure from what was notified in the RPS. I noted the discussion on Tuesday that there was some discussion around scope and I think some legal submissions from various submitters. I agree that this is something the panel should carefully consider.

Basically I noted the view of Mr Wyeth that there are submissions seeking alignment with the NPS-IB which provides some scope to basically insert those provisions into the RPS.

In the time available though I haven't been able to provide a definitive view if they are indeed within scope, just because they're so extensive, Policy 24 now covers about five pages of blue rebuttal text.

Just noting it's a bit of a concern for me. I don't know about other submitters, but I just simply hadn't had the time to do a detailed analysis of changes that substantial. I caution the panel that there might be natural justice issues or potentially scope issues to work through, but apologies, I haven't had time to do a detailed analysis.

Policies IE.2 and IE.2A, as I outlined in my statement of evidence I generally support these policies. My view is that the proposed addition of the new Policy IE.2A responds to Policy 8 of the NPS-IB appropriately. However, I seek that it be applied to significant biodiversity only. As I set out in my statement, I consider that both IE.2 and IE.2A will have significant costs as they apply to all consents.

Basically if these provisions apply to all vegetation it sets a very low bar for when an ecologist needs to get involved in a resource consent application. There's a degree of expense in that.

I heard Commissioner Wratt asking the Reporting Officers about that on Tuesday. In my view these costs have not been addressed Council's evidence to date.

126 I also raised an issue in my statement around s.74 of the RMA that wasn't
127 addressed in the rebuttal that I could see – is it 74 or 76? Apologies. The blanket
128 tree protection rules in the RMA. Basically, if you want to protect a tree you
129 need to map it and schedule it and say which property it's on, and where within
130 that property. I led the mapping of the significant natural areas in Porirua City
131 and there is a whole schedule in there saying exactly what trees are protected on
132 which properties. So I'm not sure how the rebuttal version of the RPS squares
133 with that, because you can't protect a tree unless it's listed in a district plan.
134

135 I noted Ms Guest on Tuesday confirmed her view that Policy IE.2 should not be
136 restricted to significant biodiversity and she considers that iwi values associated
137 with indigenous biodiversity are much broader than those that relate to sites that
138 meet defined significance criteria, and considers the parameters for
139 implementing the policy we need to be negotiated with mana whenua.
140

141 I think where the Panel left this was the line of questioning of whether councils
142 should develop protocols or not.
143

144 In my view, if there are areas containing species with particular cultural value
145 they should be set through the regulatory policy, including Policies 23 and 24.
146 That would provide some certainty to plan users where those values exist and
147 then the provisions could just apply to significant biodiversity because they
148 would be mapped as such.
149

150 Those were the main ones I wanted to cover. I have a few very minor comments
151 on other policies, but those are the biggies. Happy to take any questions.
152

153 Chair: Thank you.
154 [00.10.00]

155 Kara-France: In regards to your report submission here, s.50 regarding mātauranga Māori, can
156 you elaborate more please, just so I can have an understanding. Mātauranga
157 Māori – Policy IE.2.
158

159 McDonnell: This was more in regard to basically the requirements to seek cultural advice
160 through a cultural impact assessment or similar for basically any resource
161 consent that affects vegetation. I think there's a lot of costs involved in that, that
162 haven't been worked through. As I said, there would be a lot more certainty if it
163 was set out in the District Plan which areas are valuable, and that provides
164 mechanism to determine when a consent is required.
165

166 Kara-France: Can I just ask a question then in regards to the cultural advice, cultural impact
167 assessment or cultural values assessment in your statement made here. Was that
168 advice taken on-board directly from the conversation with mana whenua, such
169 as Taranaki Whānui and Ngāti Toa Rangatira.
170

171 McDonnell: No I have not consulted with them on my statement of evidence. This is purely
172 based on my experience as both consulting with the community on the District
173 Plan to map SNAs and to protect them through the District Plan, and also as a
174 practitioner having to apply for resource consents on a daily basis.
175

176 In my view it would add significant cost to be then be seeking cultural impact
177 assessments, as well as ecological assessments. Only ecologists can work

178 through the effects management hierarchy for what could be quite minor
179 vegetation removal. That's the concern I'm raising.
180

181 Kara-France: I understand what you have stated there, however experienced mana whenua and
182 tangata whenua view indigenous biodiversity very seriously, so their voice of
183 concern is valid, so therefore a culture values assessment and culture impact
184 assessment is very important for them to be involved, and then they will direct
185 the level of involvement in terms of their feedback and advice moving forward.
186

187 Is that your understanding as well?
188

189 McDonnell: I can't speak for any of the mana whenua groups in the region. I understand you
190 will have the chance, if you haven't already, to speak to them and ask their
191 views. They're much better placed than me to answer that.
192

193 I one hundred percent agree that indigenous biodiversity is incredibly important
194 for mana whenua at a whakapapa level, and it needs to be reflected. My point is
195 that that should be front-loaded into the plan, and that's what I believe the
196 National Policy Statement for Indigenous Biodiversity says, is that you need to
197 identify taonga species and map them in a District Plan. That's the ultimate level
198 of protection for me, rather than just re-litigating everything at a consent level,
199 which is a lower level of protection and costs everyone more.
200

201 Kara-France: Thank you for your feedback.
202

203 Chair: Mr McDonnell, you say this point about Policy IE.2. I think you make the point
204 that in your view that should apply to significant biodiversity. Wouldn't that
205 leave a gap in implementing the NPS-IB because clause 3.16 applies to
206 biodiversity outside SNAs?
207

208 McDonnell: Policy IE.2 is a consideration policy. There are other regulatory policies that in
209 my view cover that requirement to address vegetation that's outside significant
210 natural areas. You can do that in a District Plan through other rules and other
211 methods as well. It's more my concern that these two policies, IE.2 and IE.2A
212 while they say plan change they're not the primary regulatory policies driving a
213 plan change. They apply to resource consent.
214

215 Basically any resource consent that comes across my desk, unless it's right in the
216 middle of a city somewhere, there's some impact on indigenous biodiversity and
217 these policies will kick in and require an ecological assessment, even if it was
218 [00.15.00] the removal of a small shrub or something.
219

220 I think there needs to be thresholds in place for something that adds significant
221 costs to land owners – administrative costs as well, to both councils and iwi.
222

223 Chair: Isn't something needed in case the plan change hasn't been notified at that
224 district level? So this has a check-back up function. I think you also make the
225 point that IE.2A should not have effect once policies 23 and 24 are given effect
226 to. Again, as I understand, the officers' view on this is that if this has to happen
227 anyway there's no harm in having this as a check-in? It's not adding any
228 additional requirements.
229

230 If there is a plan change that gives effect to 3.16 – so this is biodiversity outside
231 SNAs – Policy IE.2A is not really having any additional regulatory burden?
232

233 McDonnell: As I've mentioned I think each time I've appeared before you, I think the
234 consideration policies are a bit odd and they should have sunset clauses to give
235 people certainty as to when they apply or do not apply.
236

237 As it stands there's no sunset clause and this applies to all resource consents,
238 regardless of whether a plan change has been promulgated to give effect to the
239 regulatory policies or not. So as it stands, for any vegetation removal that's less
240 than significant you need to apply the effects management hierarchy, and for
241 resourcing consenting you need an ecologist to do that.
242

243 In my view that's not reasonable. I don't believe that those costs have been set
244 out in terms of s.32AA in the Council's evidence to date.
245

246 Chair: Can I also ask you about Policy 24A. In your appendix you set out some
247 suggested track changes to that policy. I had a look. I'm not actually sure Mr
248 Wyeth has specifically commented on those amendments. When I looked at
249 them, it looked as if you're saying we can capture it all through the definition of
250 biodiversity offsetting and compensation. You're achieving the same effect but
251 you're just cutting out all of those references. You're capturing the intent
252 through the definition?
253

254 McDonnell: Largely. My view as a planner is that regulatory policies should be concise and
255 to the point. There is already large appendices attached to these definitions. I
256 think wherever possible the Panel should be looking to reduce the amount of
257 words here where they don't add a lot of value. I suggested those be struck out
258 because I thought they were unnecessary.
259

260 I can't remember off the top of my head if My Wyeth addressed that particular
261 recommendation or not.
262

263 Chair: I couldn't find it. We might actually in the Minute that we issue following this
264 hearing, ask him to have a look at that. Certainly if we are able to remove that
265 text without losing any impact then...
266

267 McDonnell: In my view, it doesn't need to be this complicated. The whole indigenous
268 biodiversity chapter in the Porirua District Plan that I worked on would only
269 cover two or three pages total, and this RPS direction guiding it covers I don't
270 even know how many pages – 65? That's a lot.
271 [00.20.00]

272 Chair: This is also setting out a lot of detail on the limitations on offsetting and
273 compensation. I am not familiar with that Porirua plan. This is juggling a lot. It's
274 sort of saying that infrastructure pathways and Policy 11 NZCPS.
275

276 I will just see if any of the other Commissioners have any questions.
277

278 Wratt: I think your evidence is quite clear thank you. I think Commissioner
279 Nightingale's covered any questions I had, so thanks very much.
280

281 Chair: We have a couple more minutes left with you Mr McDonnell.

282
283 Given your experience with consenting and involving indigenous biodiversity
284 and commissioning ecologists advice, could you talk through for me a scenario.
285 If these provisions are operative in the RPS (and feel free if you want to have a
286 minute to just reflect on that) say, for Hutt City or any of the other District
287 Council's plans that you have worked with, what is the effect of having these
288 provisions.

289
290 Can you just explain to me perhaps the additional consenting requirements that
291 someone you're acting for might face? Just so I can get a clear idea of the on-
292 the-ground impact of these provisions.

293
294 McDonnell: Basically, as I read it, if you remove the words 'qualify as significant' that
295 several of these policies apply to all indigenous vegetation, which is with no
296 threshold in terms of size or scale.

297
298 For context, or at least my experience, Porirua City Council mapping significant
299 natural areas there was quite a robust process that went through to map them
300 working closely with land owners, which is something that both the NPS-IB now
301 directs. It directs you take first principles approach to engage with them.

302
303 These areas are mapped to quite a fine level. In Porirua's case, if you look at an
304 aerial map, basically significant natural areas cover every sand of vegetation that
305 you can see on an aerial map. In Porirua it covers 17 percent of the city. There
306 is over 220 of them.

307
308 The criteria in the RPS is already (and I don't want to be disrespectful to our
309 indigenous biodiversity) but a relatively low bar. It's most areas of bush qualify.

310
311 Especially in an urban context there's indigenous vegetation outside those
312 mapped areas everywhere, based on every site. If you don't have thresholds set
313 through a plan, basically any time a resource consent is triggered then you need
314 to basically consider the effects on that, on any biodiversity - which to date has
315 been seen as the effects are less than minor. So now you would have to basically
316 bring in an ecologist.

317
318 These policies would only really, I think, be able to be applied through a
319 discretionary consent, because in other instances Council is restricted its
320 discretion in certain matters, and if it's not indigenous biodiversity they probably
321 wouldn't apply.

322
323 There are a lot of discretionary non-complying consents that work on all the
324 time, that these policies would apply and you would need to spend what is quite
325 a large amount of money to get someone to come in and tell you whether it's of
326 value or not.

327
328 My strong view is that that exercise should happen through plan drafting and it
329 should be front-loaded into the District Plan when these areas are mapped, so
330 everyone knows where they are and you have some certainty. People know what
331 they can and can't do with their land and it's not all re-litigated every time a
332 resource consent is triggered.

333

334 Chair: Thank you. Do you think that the NPS objective about maintaining and ensuring
335 [00.25.00] no nett loss, no overall loss, that objective can be achieved without these
336 provisions?
337

338 McDonnell: I think so, because most plans would have methods that encourage restoration
339 activities and enable restoration activities. Councils also have a raft of other
340 ways in which they increase biodiversity to meet their own strategy targets. Now
341 there are targets set, so there are other mechanisms other than regulation to
342 ensure you have generally an increase in vegetation across your city, without
343 having to just regulate everything through a consent.
344

345 Chair: We've heard quite a lot about how the status quo approach has not been
346 protecting and maintaining biodiversity, and while maybe the councils that you
347 have been working with are implementing the provisions in the NPS-IB, there
348 may be others that are not, and they need this direction in the RPS.
349

350 I'm still just not sure. It sounded like if it's happening anyway, at least in some
351 districts, that this is not creating an additional and unnecessary regulatory burden
352 was what I heard.
353

354 McDonnell: It's a clear requirement of the RMA if you're going to regulate something you
355 need to demonstrate its most efficient way to give effect to the purpose of the
356 RMA. You need to demonstrate that through showing the costs and benefits,
357 which I don't believe has been done in this case. There hasn't been sufficient
358 analysis to show the impact on land owners.
359

360 As it is, at least in my experience in Porirua, it does trigger a large number of
361 consents already, the significant natural area, the indigenous biodiversity
362 chapter.
363

364 I believe there just needs to be a threshold for when something receives that level
365 of protection. In my view that bar is when it's significant.
366

367 Chair: Thanks very much. I think we are at time. I really appreciate not only your
368 evidence statement but answering those questions so clearly. Thank you.
369

370 McDonnell: Thank you very much.
371

372 **Wellington City Council**
373

374 Chair: We welcome Ms Cook. Kia ora. You're here on behalf of Wellington City
375 Council. Kia ora. Welcome. I think you have presented to us before. Would you
376 like us to do any introductions?
377

378 Cook: I believe I've been introduced to the Panel before, thank you.
379

380 Chair: Ms Cook, we have your evidence statement, which we have pre-read and also
381 the City Council's submission. There weren't any separate speaking notes or
382 anything?
383

384 Cook: I did send in speaking notes.
385

386 Chair: Sorry, yes we do have those as well.
387
388 We have 35 minutes, so however you would like to present. If you would like to
389 take us to the key points. If you can focus on the areas where you have differing
390 views from the Reporting Officer – although I think there are quite a few of
391 those still aren't there.
392 [00.30.00]
393 I'll hand over to you. Thank you.
394
395 Cook: Excellent. Thank you very much Panel.
396
397 Mōrena. Just to get to the point, I will be addressing four key issues to re-
398 emphasise my original evidence. These points are the paraphrasing of the NPS-
399 IB provisions - New Policy 24C and 24D c; the implementation of the National
400 Policy Statement for Indigenous Biodiversity; and Policy 24a and Appendix 1A.
401
402 As outlined in my evidence, Wellington City Council agrees with the original
403 approach taken by GWRC to directly reference the NPS-IB as it prevents
404 Territorial Authorities from having to reconcile the inconsistencies between
405 higher order documents.
406
407 Mr Wyeth's has proposed to expand this framework in the rebuttal to include
408 majority of provisions in the NPS-IB now as policies 24B, Appendix 1B,
409 Appendix 1C and Appendix 1D.
410
411 As stated in my original evidence, if a policy is expanded on in the policy
412 statement, it should add regional specificity and not just paraphrase or alter the
413 national direction. Additionally, if a proper s32 assessment is conducted, then
414 there should be no question as to whether policies are giving effect to higher
415 order documents as the consideration process would clearly be demonstrated.
416
417 Overall, I agree with Greater Wellington's original approach and find the
418 inclusion of these policies to be confusing and over-complicates the RPS.
419
420 Mr Wyeth has also proposed two new policies in the rebuttal Policy 24C - to
421 manage indigenous biodiversity in the coastal environment, and Policy 24D - to
422 manage effects of Renewable Energy Generation and Electricity transmission
423 activities.
424
425 Due to the stage in the process these policies were proposed and subsequent time
426 constraints, I have not completed a full planning analysis on these new policies
427 but to summarise my opposition:
428 a. I do not consider there to be scope particularly for policy 24D;
429 b. The NZCPS was gazetted in 2010, therefore policy 24C being introduced at
430 this rebuttal stage is quite frankly unacceptable.
431
432 Policy 24D is not related to the implementation of the NPS-IB as Renewable
433 Energy Generation and Electricity Transmission matters were explicitly exempt
434 from the NPS-IB.
435
436 Regardless of the substance of the policies, such a shift from the original
437 proposed RPS, without an appropriate s32aa assessment, including assessment

438 of alternative policies, and the ability to submit on the proposals is problematic
439 and has natural justice implications.

440
441 Therefore, I recommend these policies be deleted and re-considered through a
442 full Schedule 1 process.

443
444 Similarly, in my primary evidence I recommended that greater consideration
445 should be made to this process as a separate variation or plan change that gives
446 effect to all relevant matters of the NPS-IB.

447
448 If the RPS must give effect as soon as practicable, in addition to my original
449 points whether the current process is adding value, the definition of ‘practicable’
450 is “to be done or put into practice successfully”, and I question whether a process
451 can be considered to be done successfully without undertaking a full Schedule 1
452 process.

453
454 To points raised on legality in the rebuttal, I feel it important to emphasise that
455 a process to be lawful is a bottom-line and not a target. I consider it would also
456 be lawful for GWRC to do a full plan change process, as one will still be needed
457 to give full effect to the NPS-IB, as noted in the s42a report.

458
459 Accordingly, I consider my original recommendation set out in the statement of
460 evidence as still appropriate.

461
462 Finally, in relation to proposed Policy 24a and Appendix 1A, I note that my
463 recommendation for a biodiversity metric tool was not made to replace policy
464 but to ensure the policy is achieved appropriately.

465
466 If a preferred 10% net gain is retained, then a metric tool would be appropriate
467 to provide certainty for both the consent applicants and consenting authorities.

468
469 In relation to my points on aquatic offsetting and compensation, I note my
470 evidence was mentioned by Mr Wyeth, but no further assessment was provided.

471
472 To re-iterate my concern, biodiversity offsetting and compensation is directly
473 related to the NPS-IB and to overlap the matters with aquatic offsetting and
474 compensation is inappropriate as aquatic offsetting and compensation covers a
475 larger range of values than just biodiversity.

476 [00.35.00]
477 This policy is not robust enough to cover all matters and should be considered
478 as a separate policy.

479
480 Therefore I consider my original recommendation to still be applicable.

481
482 Thank you for your time.

483
484 Chair: Thank you very much Ms Cook. I had a few questions. I will just see if any of
485 the other Commissioners...

486
487 Paine: I have a couple of questions of clarification.

488

489 Good morning Ms Cook. Not being a planner excuse this question. When you
490 say the coastal policy statement was gazetted in 2010 and is now being
491 introduced at the rebuttal stage is unacceptable, can you just expand on that?
492

493 Cook: The original points were including indigenous biodiversity, particularly for the
494 National Policy Statement of Indigenous Biodiversity, was because it was
495 gazetted last year in 2023 in the middle of the hearing's process, which as I said
496 in my original statement is a messy, messy process.
497

498 But, the coastal policy statement has been gazetted and out for a long time. This
499 could have been included during the proposed RPS.
500

501 Paine: Okay, got that. The other thing was in (c) straight after it, about it's not related
502 to the implementation of the renewable energy generation.
503

504 You're saying that 24D there's no scope for that?
505 Cook: I believe that's also my point (a) for that. Between the two matters, if I remember
506 correctly, this was a matter brought by Forest & Bird during a legal submission
507 in their planning evidence and then was brought forward as a recommended
508 policy. There is to my understanding no scope in the original submission, but
509 give effect to the NPS-IB when it has been gazetted.
510

511 As the NPS-IB explicitly excludes those two matters I cannot reconcile the fact
512 that it's giving effect to the NPS-IB because it's not a matter that can be
513 considered within it, because it's explicitly in clause 1.3 that it's excluded.
514

515 I understand that this was done because the National Policy Statement was
516 intended to come forward for both of those matters, but currently is a gap. Again
517 I'm not talking of the matter of substance, more matters of process.
518

519 Wratt: Can I explore that a little bit more. I need to go back and check the original
520 submissions, but I know in their evidence both Meridian and Transpower, and
521 other submitters, have raised concerns about both the NZCPS and how it
522 connects with this RPS, and also how the renewable energy and electricity
523 transmission are dealt with.
524

525 If that is raised in their original submissions, you would still say it's out of scope
526 because of what is in the NPS-IB? Am I hearing you correctly?
527

528 Cook: I haven't gone into detail on their submissions, but from my understanding they
529 just wanted further clarification and expansion on how it will be dealt with. But,
530 the NPS-IB clearly says that it's exempt, and then there's adding further policy,
531 I think was put in, and filled this gap.
532

533 I'm not saying that doesn't need to be done, I'm just saying I don't consider that
534 to be in scope.
535

536 Wratt: I think I understand what you're saying. Thank you.
537

538 Chair: Any questions?
539

540 Kara-France: No thank you Madam Chair. Thank you.

541
542 Wratt: I did have another question and it really relates to Hutt City Council's position,
543 which was particularly around how you deal with indigenous biodiversity that
544 is not significant in consenting processes. That's not something I don't think that
545 [00.40.00] you've raised, but do you have any comment? His concern was essentially I
546 think the costs associated with dealing with non-significant indigenous
547 biodiversity at the consenting stage.
548

549 Cook: I think it's a concern for most councils trying to implement this. I think the
550 provisions are directly related to clause 3.16 of the NPS-IB.
551
552 It's the same thing as I talked about earlier. I have less concern about this being
553 added and more how it's being done.
554 In terms of the approach, in Wellington City it's going to be a difficult one. We
555 are considering processes such as having an in-house biodiversity expert, so that
556 we can have someone go out onsite for mum and dad developers, to make sure
557 that we are minimising those costs – having a suitably qualified ecologist in-
558 house. Those are different processes we are trying to make, because we realise
559 that how we are trying to reconcile that particularly, that significant, is that we
560 are probably going to add our own threshold – though we cannot confirm how
561 we are currently going to do that. That is still a consideration we are making.
562

563 Wratt: My understanding from his submission was that the way Porirua City Council
564 are essentially covering it is that they have quite extensive mapping of
565 significant indigenous biodiversity. But, that still doesn't deal with the NPS-IB
566 requirement to protect indigenous biodiversity more generally. It doesn't quite
567 deal with the issue.
568

569 Cook: Also my understanding reading through s.32 of the NPS-IB is to also be able to
570 give areas that weren't originally during the mapping process considered
571 significant time to develop to be potentially significant. I think that's a bit of that
572 reconciliation process.
573
574 So there are still probably areas of indigenous biodiversity that maybe needs
575 another twenty years to then be considered significant. If you currently don't do
576 anything to protect them they will never become significant.
577
578 It's been something that we have been toying around with at Wellington City
579 Council, about where is that threshold? Overall if it's not significant and we are
580 the 2B and just making sure that's maintaining it, how we are going to do that is
581 by not being (and not to predetermine any processes that we are currently going
582 through) too intense on individual properties; but making sure that we're having
583 strong restoration and maintenance policies to ensure that there is a balance
584 between the two; so that we are not being too restrictive on individual properties,
585 but we are still getting the outcome set out in the NPS-IB.
586

587 Wratt: Do you think that could be reflected in some way, in the RPS?
588

589 Cook: I think it's appropriately reflected in the NPS-IB. As a stated, it could be if it
590 adds more regional specificity or gives us further direction, rather than
591 paraphrasing the NPS-IB.
592

593 Wratt: Thank you.
594

595 Chair: The change that you seek Ms Cook in the introduction, to add the words
596 “recognising the role of people and communities as stewards” that is part of the
597 decision-making principles which feature in a few provisions in this topic.
598

599 I know it's the introduction, but do you still think that those words are needed
600 and they're useful to have in the intro?
601

602 Cook: I didn't address this in my speaking notes, just because I wanted to get my points
603 across. But, I note that in the introduction that a few of the other decision-making
604 principles are also paraphrased in it, to the point I believe Ms Guest made is that
605 it's in the definition of decision-making principles, therefore it's not necessary
606 to be included in the introduction. However, I think the same logic can also apply
607 to the rest of them if paraphrasing only a portion of it.
608

609 It's also in the definition, so I would generally recommend either everything is
610 deleted, or all of it is included; and not just say half paraphrasing.
611 [00.45.00]

612 Chair: Thank you. We will give that some more thought.
613

614 That paragraph where you seek that relief, that also talks about the wellbeing of
615 people and communities. This point has come up from other submitters saying
616 these provisions need more balance. There needs to be that fourth limb of the
617 objective in the NPS-IB which refers to protecting biodiversity while also
618 providing for economic, social – the wellbeings.
619

620 I am not sure – I don't think Wellington City Council had any specific relief on
621 that. In terms of providing for development, you don't have any concerns with
622 their being a lack of balance?
623

624 Cook: I think that's always going to be concern. I think how we are approaching our
625 own district plan and what we were going to do implement the NPS-IB all of
626 those matters will be taken into consideration.
627

628 In terms of adding that regional specificity, if Greater Wellington chooses to add
629 something, to provide more detail about how we can provide for the economic
630 and the wellbeing in a more robust way, then that's definitely appropriate, and I
631 think it's something Greater Wellington should investigate. However, it is
632 difficult to add any more nuance to replicating the NPS-IB as we also have to
633 consider all those matters to give effect to that document as well.
634

635 Chair: I guess on one hand you can see that the Council is saying to get some more
636 balance we've got national direction that says infrastructure needs to be provided
637 for. Trying to reconcile the NPS-IB with that other direction they've
638 recommended 24D through the rebuttal. I appreciate it's through the rebuttal, so
639 perhaps not the process that you're saying is needed.
640

641 My Wyeth on day one said how you provide for that fourth limb of the objective
642 is through recognising and providing for activities like renewable infrastructure.
643

644 Cook: I believe that they were excluded. There was no provision that needed to provide
645 for them. If we were going to write a chapter based on what is in the NSP-IB
646 that would be a matter that would be excluded.
647
648 Whether we determine through a process from a full variation that we could
649 include matters to cover both renewable energy generations and electricity
650 transmission, but that would also be a process that we would probably take with
651 some of those infrastructure developers from the start, to make sure that
652 everyone as appropriate input and we get everyone's wellbeing is assured and
653 make sure it's appropriate for what's right for Wellington City.
654

655 Chair: The only other thing I wanted to ask you about is the aquatic compensation and
656 offsetting.
657
658 Are you familiar with Ms Pascal's reply evidence for the freshwater topic? Don't
659 worry if you're not, but basically in that reply evidence Ms Pascal recommends
660 a new policy – I think it's 18A and B, that talk about applying the effects
661 management hierarchy where there's loss of river extent and natural inland
662 wetlands.
663
664 As part of that, there is provision there for when aquatic offsetting and
665 compensation is appropriate, and it refers back to the principles in the NPS-FM.
666 [00.50.00]
667 That's there in those freshwater provisions, and I don't know if I'm overly
668 simplifying it, so really good to get your views, but my understanding of what's
669 happening in the biodiversity provisions with aquatic offsetting and
670 compensation is that it's saying, effects management hierarchy when it's applied
671 where you're dealing with potential biodiversity impacts you also need to look
672 at those aquatic offsetting and compensation principles in the NPS-FM
673 appendices.
674
675 I'm not quite sure I follow your concern with that.
676

677 Cook: It's more that having both measures in the same policy can be quite confusing if
678 you're a lay person trying to read it, and trying to separate out. As I said, the
679 term "biodiversity offsetting compensation" is directly now referring to
680 terrestrial ecology in the NPS-IB. That is the heading of that policy.
681
682 I'm not saying to remove it completely but it would be more appropriate to move
683 those measures into Policy 18A and B, was it; so it's more of a holistic policy.
684 Matters in the appendices which relate to those specific biodiversity matters can
685 then just be re-referenced into that policy so it's just one robust policy. You only
686 need to go to one place if you're doing any type of aquatic offsetting and
687 compensation. You're looking at all the relative values – mana whenua values,
688 amenity, recreational. You're considering the holistic package, because
689 otherwise I think it might get a big segmented and I don't think that was the
690 intention of the principles in the NPS-FM.
691

692 Chair: Thank you. I think we'll be asking the Reporting Officers to give some more
693 thought to that.
694
695 Is that Policy 24A?

696
697 Cook: Yes. The policy title is principles for biodiversity offsetting and biodiversity
698 compensation.
699

700 Chair: If there was a proposal that was going to impact on indigenous biodiversity in
701 say a river, is it your view that it's enough for the RPS to address how those
702 effects are managed through the freshwater provisions and you don't need to
703 deal with that in Policy 24A?
704

705 Cook: It can be still addressed but perhaps is in the aquatic offsetting compensation
706 policy in and of itself to include those matters. I'm not saying to completely
707 remove considerations for biodiversity and the aquatic and offsetting
708 conversation; I just think it could be in a more appropriate place in the RPS.
709

710 Chair: Actually related to that Ms Cook, the relief that you seek on Policy 24, which is
711 para (c), which is to insert the reference to Policy 6 and 7 of the NPS-FM, (I
712 know the numbering has changed)... what is the officer's view of that? I think
713 there's now a reference to they're still supporting that Policies 18A and B are
714 referenced there.
715

716 Cook: If I remember correctly, it's now directly referencing to Appendix C and D.
717 [00.55.00]

718 This is to the point of going from the original stance of directly referencing the
719 National Policy Statements to including all those provisions in the RPS and then
720 referencing it that way – if I remember correctly.
721

722 Chair: I see it in the explanation to Policy 24. I think what's happened is that it's been
723 incorporated through 24A. The explanation to 24 points you in the direction of
724 those freshwater provisions. I think it's how it's been structured. I understand
725 better now – the potential confusion that you have identified.
726

727 I think those were all the questions we had for you. Thank you very much for
728 your time and for coming today and presenting.
729

730 Cook: Thank you Panel.
731

732 Chair: We will take a break and then come back hear from Transpower. Is it possible
733 if we can start at 10.40 – it's just that it might give us a little more space? Is that
734 alright with the Transpower team – 10.40am thank you?
735

736 [Break taken – 57.12]
737

738 **Transpower New Zealand Ltd**
739

740 Chair: Kia ora. Nau mai haere mai ki te kaupapa o te rā. We welcome Transpower New
741 Zealand Limited. We have received your planning evidence in previous hearing
742 streams, but I think this is the first time you're presenting in person, so we'll do
743 some introductions.
744

745 Ko Dhilum Nightingale tōku ingoa. I'm a Barrister with Kate Shepherd
746 Chambers and Hearings Commissioner and am chairing both the P1S1 Panel
747 and the Freshwater Panel.

748
749 I will invite the other Commissioners.
750
751 Paine: Thank you. Tēnā kōrua. Ko Glenice Paine tōku ingoa. I'm an Environment Court
752 Commissioner on both panels. Kia ora.
753
754 Wratt: Tēnā kōrua. Ko Gillian Wratt tōku ingoa. I am based in Nelson. My background
755 is [58.07], originally just on the Freshwater Panel and now on the [58.18].
756
757 Kara-France: Kia ora kōrua. Ko Ina Kumeroa Kara-France tōku ingoa. Ko Waikato Tainui, ko
758 Ngāti Koroki Kahukura, ko Ngāti Tipa, ko Ngāti Kōata ki Rangitoto ki te tonga.
759 Ko Rongomaiwahine, ko Kahungunu, ko Ngāti Pahauwera, ko Ngāti Popoia, ko
760 Maungaharuru Tangitū [58.39]. Ko Ngāti Whakaari, ko Ngāti Ruruku, ko Ngāti
761 Kahungunu. Ko Ngāti Tūwharetoa, ko Ngāti Te Rangi Ita. Ko Te Ati Haunui-ā-
762 Pāpārangī, ko Tūmango, ko Tūpoho, ko Paerangi, ko Ngā Rauru, ko Ngāti
763 Hinewaiatarua. E ngā whānau, e ngā hapū, e ngā iwi i ngā takiwā. Nō reira, tēnā
764 tātou katoa.
765
766 Independent Hearing Commissioner. I am on both panels. I am based in Tāmaki
767 Makaurau. Nau mai haere mai. Kia ora.
768
769 Chair: If the Council team that's in the room could introduce themselves as well, thank
770 you.
771
772 Guest: Tēnā kōrua. Ko Pam Guest tōku ingoa. He Kaitohutohu Matua ahau. I'm one of
773 the lead Reporting Officers for Greater Wellington. Welcome.
774
775 Iftikar: Kia ora kōrua. I'm **Fathima Iftika** [59.31]. I'm the Director for Strategy, Policy
776 and Regulation at GWRC.
777 [01.00.00]
778 Chair: Thank you. Probably just very quick housekeeping matters. A bell will ring
779 when we are a few minutes out from our allocated time, five minutes out from
780 our allocated time.
781
782 Speaking into the microphones, just hit the button, and if you could say your
783 name. I'm sorry, I keep forgetting to do that myself, just the transcript.
784
785 Ms Whitney and Ms Shand welcome. We have your evidence, your two sets of
786 evidence and also your speaking notes Ms Whitney. I think we have just received
787 those. If you are able to go through them and assume that we haven't pre-read
788 the speaking notes.
789
790 Shand: Good morning Panel. Thank you for the opportunity to speak to the Transpower
791 submission today. My name is Sarah Shand. I am employed by Transpower as
792 an environmental planner within the Environmental Policy & Planning group. I
793 am joined here today with Pauline Whitney, an Independent Planning Expert
794 from Boffa Miskell Ltd.
795
796 As you have taken our evidence as read, we'll make the best use of time today
797 and propose that Ms Whitney responds to the rebuttal evidence of Mr Wyeth. We
798 will both be then available for questions.
799

800 Whitney: Kia ora. My name is Pauline Whitney, for the record Planning Consultant at
801 Boffa Miskell Ltd. I did provide some speaking notes on Monday afternoon. I
802 updated them slightly last night and then I've got another update this morning,
803 but I can highlight where I have changed that. I am happy to provide these again
804 to the panel. They are quite detailed, but I think given the nature of the rebuttal
805 evidence I think it's useful to outline clearly my concerns in the outstanding
806 points.
807
808 If agreeable to the Panel I will just talk through my notes now thank you.
809
810 Obviously you have my evidence and I will take it as read. I confirm the relief
811 sought in my evidence in chief still stands.
812
813 As the Panel will appreciate things have move on considerably since the S.42
814 Report, specifically in relation to electricity transmission, with the officer
815 recommending through rebuttal a complete new set of provisions.
816
817 To confirm I do not support the rebuttal recommended provisions, and I can
818 really just confirm that my evidence is confined to the application of Plan
819 Change 1 to electricity transmission – so that's the basis of my points I will be
820 making.
821
822 I will endeavour to articulate my concerns within an allocated speaking time. I
823 did a quick timing this morning and it was only five minutes, so I think we'll be
824 good. But, I wish to emphasise my concerns with the scale and the significance
825 of the recommended changes, with no real regard in my opinion for the ability
826 for all interested parties to have a fair say.
827
828 I do strongly urge the Panel to question if the extent of the changes is
829 appropriate, or whether a new plan change is required. Again, I am largely
830 confined in my comments to electricity transmission within that context.
831
832 I fully appreciate the options in front of the Reporting Officers, being to insert
833 provisions in the RPS remain silent or fill the gap. My concern is that the gap at
834 this policy stage has been filled in a rushed and incomplete manner and is based
835 on daft consultation documents, being the NPS-ET and NPS-REG, which have
836 not been settled or gazetted.
837
838 As it stands, the provisions recommended through rebuttal do not give effect in
839 my opinion to the gazetted NPS-ET, do not give full effect to the exemption
840 within clause 1.3 of the NPS-IB, or reconcile with the NPS-ET with the NZCPS.
841
842 As a starting point I think it would be useful to highlight the differences between
843 that of renewable electricity generation (REG I will call it) and electricity
844 transmission (ET).
845 So while generation is generally confined, as I understand it, to a site or
846 geographic area, electricity transmission is very much a linear activity with
847 assets traversing large areas.
848
849 I did a very quick calculation, and I say approximately, and there is about 436km
850 of national grid lines within the Greater Wellington Region. Of that 436km
851 approximately 33km is within SNAs that have been identified.

852 [01.05.00]

853 I do acknowledge that only Wellington, Kapiti and Porirua have either proposed
854 or operative SNAs in their plans. The other Councils have still yet to identify
855 them.

856 I think that just gives some context to the scale and implications of these
857 provisions to the national grid linear assets.

858
859 In my speaking notes I have included some plans, just to give a visual spatial
860 picture of the application of the SNAs.

861
862 As we have recommended in the rebuttal evidence, the provisions would apply
863 to the maintenance, upgrade and development of the national grid assets. That's
864 quite a crucial point because those are three different activities.

865
866 I will just acknowledge and note that Transpower doesn't have resource consent
867 for its existing assets. Very limited ones are designated in the Great Wellington
868 Region, but the majority given their age don't have resource consent.

869
870 Instead, Transpower relies on the National Environmental Standards for
871 Electricity Transmission activities (and I apologise I have used the acronym
872 there in my speaking notes - it's called the NESETA) to manage the maintenance
873 and upgrade of its existing assets. That essentially says you need resource
874 consent for vegetation works relating to existing lines and activities if it's in an
875 SNA, or there are rules in the plan to regulate that activity.

876
877 The NESETA creates a rule framework you apply under the National
878 Environmental Standard. But, obviously what's in the district and regional plans
879 has relevance and triggers that NESETA provision.

880
881 As such, what gets directed in the RPS will have real relevance and implications
882 for both the maintenance and upgrade of existing assets and activities, as well as
883 obviously new.

884
885 Just as a minor point I also note the definitions of electricity transmissions
886 recommended in the officer's rebuttal, there's no definition for assets – as was
887 stipulated in the 2023 draft NPS-ET; whereas the rebuttal does provide
888 definitions of assets and activities for REG. There's just a wee gap there and I
889 guess that just points to my overall concerns that there are a lot of wee gaps that
890 I guess paint the picture for me it's incomplete and there are some issues.

891
892 In my opinion the S32AA evaluation is lacking given the scale of the changes.
893 There is no reference or evaluation at all to the gazetted NPS-ET. In my evidence
894 in chief, I included a copy of the NPS-ET and particularly if the Panel notes
895 Policies 2 and 5, which I will term they're kind of enabling policies which are
896 quire directive in their language in terms of electricity transmission activities.

897
898 As outlined in my evidence in chief, Plan Change 1 as notified was very
899 confined.

900
901 The main point of my evidence was to highlight and apply the specific wording
902 that the NPS-IB does not apply to electricity transmission or REG and how the

903 policy gap is addressed. So things have moved on quite a bit since then through
904 the Reporting Officers' recommendations.

905
906 I would just like to point out the NPS-IB has a clear exemption. I have just
907 highlighted on page-3 of my speaking notes that. I probably don't need to go
908 through it, other than I am still concerned for example I don't think the officers
909 really addressed my concerns that the ET is exempt from the NPS-IB. They have
910 used the NPS-IB as the basis for introducing these provisions, such as Policy 47.
911 In some respects they have made it worse because they have then included a
912 clause relating to electricity transmission in that policy, where the basis for those
913 changes in Policy 47 is the NPS-IB, but ET is exempt from that.

914
915 As an example, clause (k) relates to established activities. So how would their
916 policy be applied to intermittent maintenance activities for the grid, where
917 they're done every five or ten years? How would this be measured against the
918 intensity, scale and character? There would just be no evaluation against
919 electricity transmission activities, particularly maintenance activities.

920 [01.10.00]

921 Chair: Sorry Ms Whitney, was that (k) of 47?

922
923 Whitney: Correct.

924
925 Chair: That's not specific to transmission but you're saying it would be...

926
927 Whitney: Would be.

928
929 I note that the Officer has recommended a new clause 2 (setting aside the
930 numbering) which the provision is to manage the adverse effects of REG and
931 ET, but it finishes with an 'and' so I see all those provisions applying. Again, it
932 may be a drafting, but it just highlights my concerns with the rushed nature.

933
934 I'm not critiquing the Officer, it's just when I read it with fresh eyes I have real
935 concerns with how district and regional councils and people processing consents
936 will read this.

937
938 Just turning to page-4 then of my speaking notes, the bullet point, in terms of
939 recommended Policy IE2A again the conjunctive nature of that policy, the
940 officers recommended a new clause for ET, but the way it reads as drafted
941 clauses (a) and (b) also would apply, and then you have (c) applying.

942
943 In effect, ET has an additional threshold. They have to (a) manage significant
944 effects by applying the effects management hierarchy; (b) they're no overall
945 loss; and then (c) prove to the extent practicable. So it's almost an additional
946 hurdle. Again, maybe a drafting error, but it just highlights my concerns.

947
948 I also just note that clause (c) is not confined to significant adverse effects, it's
949 all adverse effects, which again is quite a high bar.

950
951 Just turning onto page-5 then, in response to the rebuttal recommended Policy
952 24D and this also commentaries in relation to 24C, I do not support the provision
953 of such a policy and I have provided some reasoning there. I will just go through
954 them now if that's okay.

955
956 In terms of electricity transmission, in my evidence, in my opinion, the policy
957 gap is filled by the 'seek to avoid' policy approach which has been rolled out in
958 district plans and has been applied in the Natural Resources Plan – Policy 14,
959 which sets a clear policy framework. The operative RPS policy 23 and policy 47
960 would still continue to apply.
961
962 The filling of any perceived gap through the council rebuttal evidence is not in
963 my opinion an appropriate approach. No parties, including Transpower (and I
964 appreciate I'm just the expert) has had the opportunity to comment and submit
965 on the policy and therefore I question the natural justice element of the
966 recommended policy, and all the other changes.
967
968 According to its records, Transpower was not invited to any pre-hearing
969 meeting. I understand there was one initiated. And, there has been no
970 engagement at all with Transpower over the significant changes, despite the
971 Officer identifying Transpower has having a strong interest in this matter.
972
973 I appreciate time may have been the issue, but given the significance of the
974 changes, I have concerns about that.
975
976 Turning onto page-6, the first bullet point:
977
978 The provided s32AA evaluation provides no specific detail as to the efficiency
979 and effectiveness of the approach. Again no evaluation of the gazetted NPS-ET.
980
981 The basis for the report officer recommended ET Policy 24 appears to be on the
982 2023 draft NPS-ET and REG. With all due respect, these NPS's received
983 numerous submissions. I know they're not collated notified on the MFE website,
984 but I did hear something – was it 80 to 100 submissions. That was just something
985 I heard and a number that springs to mind.
986
987 It's far from settled in my opinion. I do have a concern of the filling of this gap
988 based on those provisions which are still very much draft.
989
990 In terms of the specifics of the policy, I note, as I mentioned earlier, it would
991 apply to all maintenance and upgrade activities.
992 The RPS as a whole does not in my opinion give effect to the NPS-ET - largely
993 reflecting that the RPS was notified prior to gazetting of the NPS-ET in 2008.
994 So it has been some time and in that period from my reading the Regional
995 Council
996 [01.15.00] has not initiated a plan change to give effect to the NPS-ET.
997
998 I guess my concerns with Policy 24D again is in isolation of the wider policy
999 framework within the NPS-ET and also within the draft 2023 NPS-ET. There
1000 were also other policies in there to be read alongside the effects management
1001 hierarchy policy.
1002
1003 I guess our concern is they've (for the lack of better language) 'plucked' out one
1004 element of the NPS-ET, the draft 2023 version without consideration of those
1005 other policies, which do recognise matters such as the existing nature of the

1006 assets, the benefits, technical and operational constraints, site, route, method,
1007 selection process. There's a whole lot of other considerations.

1008
1009 In terms of Policy 24C and 24D, the relationship is not clear. I understand from
1010 questions to the officer that they are going to be read together. That doesn't come
1011 across to me when I read them.

1012
1013 I have concerns almost that 24C trumps 24D. You stop at the 'avoid' and there's
1014 no cross-references between the policies.

1015
1016 So I have some concerns with that, given the NPS-IB clearly states it does not
1017 apply to electricity transmission. Therefore the inference that the NPS-IB
1018 prevails over ET in respect of this isn't correct.

1019
1020 I do not believe Policy 24C and D as applied to ET have been reconciled, or that
1021 they provide a framework for structured analysis.

1022
1023 Policy 24C is very clear as an avoid policy. While there is a potential pathway
1024 in policy 24D, this comes up against the avoid directive in 24C.

1025
1026 This is a new point I added:

1027
1028 I just want to draw to the Panel's attention as well the recently operative Natural
1029 Resources Plan which provides the management framework within the coastal
1030 environment – Policies 38 and 39.

1031
1032 Even more relevant, in terms of electricity transmission is Policy 14, and that
1033 specifically states that in the event of conflict, and it then specifically then refers
1034 back to Policy 38, that Policy 14 prevails.

1035
1036 So in my opinion, Policy 14 of the Natural Resources Plan provides a form of
1037 structured analysis as directed in the *Ports of Otago* Supreme Court Case;
1038 whereas policies 24C and D don't speak to each other and haven't been
1039 reconciled.

1040
1041 And, I have concerns that given plan change 1 to the RPS that the changes put
1042 forward in the rebuttal will come into effect in any mediated versions of the NRP
1043 which only became operative last year, are then going to be opened up again.

1044
1045 Nothing has changed in terms of NZCPS and NPS-ET. Setting aside NPS-IB
1046 which doesn't apply to ET.

1047
1048 I keep harping on about that, but I guess it's a key point in my speaking notes
1049 and evidence.

1050
1051 Finally, I just want to draw the Panel's attention to Transpower's submission on
1052 the strengthening of national direction on renewable electricity generation and
1053 electricity transmission from last year. I provided a link to that submission in my
1054 evidence, as I know it's not on the MFE website, but it is on the Transpower
1055 website.

1056

1057 I don't want to go into detail about the relief sought or the concerns raised, but
1058 I just want to probably say in my opinion from reading the submission and the
1059 drafting provided it's far from locked in in Transpower's perspective, and I
1060 suspect maybe in other submitters.

1061
1062 The main concerns raised (and there's probably just three key ones) were the
1063 lack of accompanying policy framework to recognise constraints, benefits and
1064 so forth, and I touched on that earlier.

1065
1066 The provisions would apply to all national grid activities whether it's
1067 maintenance upgrade or development. In its submission Transpower sought a
1068 differing approach for they termed it 'routine, non-routine and new
1069 development'. So a different kind of hierarchy would be applied depending on
1070 the activity.

1071
1072 Then, whether operational functional need needs to be demonstrated for all
1073 activities.

1074
1075 I guess my takeaway point then finally is I think most everyone here, everyone
1076 [01.20.00] I have heard and the evidence I have read, all agree that this an interim gap and
1077 it will be filled.

1078
1079 I strongly support it being filled at the time when we have the gazetted NPS's
1080 and are able to accurately give a full picture, and a plan change is needed to do
1081 that. I think the changes introduced through the rebuttal are so significant and
1082 they don't allow for that.

1083
1084 I am available for conferencing, but I think there's some fundamental issues
1085 there. To be honest, the scale of changes needed, which I would support,
1086 probably can't be done through the process now.

1087
1088 There's a lot in there.

1089
1090 Thank you.

1091
1092 Chair: Yes. Thank you very much. I don't intend to speak for Mr Wyeth, but I
1093 understand that Policy 24D was proposed to assist, to fill in that gap. But, I hear
1094 you very clearly that this is too rushed, trying to do too much and not enough
1095 consultation. You're also saying it doesn't give effect to the NPS-ET, which the
1096 RPS is required to. That was very clear.

1097
1098 On the caucusing point, you think it's not... I don't know if salvageable is right?

1099
1100 Whitney: To be honest, I always want to make myself available. I know Transpower would
1101 be happy for me to participate. I guess the nature of my concerns as an expert
1102 witness is I'm not sure what benefit there would be, to be frank.

1103
1104 I guess we would want some clear direction from the panel as to their starting
1105 point. Maybe what's in or out for lack of a better term.

1106
1107 Chair: I'm wondering: there's this opportunity here to attempt to reconcile national
1108 direction that has tensions and conflicts in it. Do we leave it and wait and see

1109 what happens with the draft NSP-ET, or do we say, “This opportunity is here
1110 and shall we try to do the reconciliation?” – which as you referred to the *Port of*
1111 *Otago* case, the Court was saying the RPS is the place do that.
1112

1113 Whitney: I see a lot of dangers in trying to reconcile it now without the full picture and all
1114 the information in front of us. My concern is that provisions will get locked in.
1115

1116 I realise there has been talk, and certainly in the draft NPS-ET it was about being
1117 (I’ll call them) automatic provisions that get slotted in. The Council would still
1118 need to do a plan change in my opinion to somehow get rid of those provisions
1119 within here that don’t apply then, that are superseded by that new NPS-ET, to
1120 tidy up.
1121

1122 I just note that the NPS-ET was gazetted in 2008 and as of to date there has not
1123 been a plan changed initiated by the Regional Council to give full effect to the
1124 NPS-ET. So I have some concerns that these provisions even though they may
1125 be seen as interim will be locked in for quite a while. If we have inconsistent
1126 provisions it certainly won’t assist regional councils or people applying for
1127 resource consent and knowing what applies and what should apply. The different
1128 status, weight and so forth.
1129

1130 I guess that was my concern as well. You would have noted in my evidence in
1131 chief that I actually sought specific wording saying, “this does not apply to ET”.
1132

1133 Wratt: Can I just clarify that? So your position now would be to go back to your relief
1134 sought and your evidence in chief?
1135

1136 Whitney: Correct.
1137

1138 Wratt: Which is to identify where in the RPS does not apply to electricity transmission.
1139 Whitney: Yes. That’s completely correct. I’m always conscious when I read that, that
1140 people using this plan and plan administrators won’t have had necessarily the
1141 benefit of listening to all of this, and understanding the why and the what and
1142 everything.
1143

1144 The NPS-IB clearly states it doesn’t apply to ET. The lack of clear direction or
1145 signposting will add confusion to plan users later on, and even when Council
1146 [01.25.00] comes to do a future plan change to give effect to any NPS-ET, knowing what’s
1147 the status and so forth.
1148

1149 Wratt: So our question for the Reporting Officers would be if they look your original
1150 relief do they have concerns with where you have suggested inserting that, as an
1151 alternative to Policy 24D, which obviously I understand where you’re coming
1152 from. You don’t feel it’s an appropriate time essentially to be putting that into
1153 the RPS.
1154

1155 Whitney: That’s correct, yes. I guess my particular concerns as well - it’s 24C and D,
1156 Policy IE.2A, which will apply to maintenance activities outside SNAs. It will
1157 be a significant policy for Transpower given it has 436km of line within the
1158 region.
1159

1160 Wratt: In essence, that's saying that every time you go and do some maintenance work
1161 on a piece of line that's outside of an SNA you will still have to go through a
1162 consent process if there is indigenous biodiversity? Is that how you read those
1163 provisions?
1164

1165 Whitney: Potentially yes, because when I read that, it's a consideration for resource
1166 consent. It obviously depends what's in the district plan and regional plan in
1167 terms of the trigger. But, when I read those policies and 24D as well, you kind
1168 of get a picture that there could be a consenting threshold and therefore
1169 Transpower would need to potentially trigger consent.
1170

1171 Remembering this is the RPS so it sets the direction for those lower order plans,
1172 which is pretty key.
1173

1174 Chair: I do think that there are some drafting errors in those policies. Putting aside 24D,
1175 IE.2A and 47, I think could potentially be fixed. I think what the officers are
1176 suggesting there is that whole list that would apply – it's the avoid, remedy,
1177 mitigate where practicable. There's a specific provision that applies to electricity
1178 transmission activities. I had also picked up that 'assets' was missing, but again
1179 that's a drafting fix.
1180

1181 What I'm just wondering in my mind is, if Policy 24D was to be deleted, giving
1182 effect to the NPS-IB still requires consideration of impacts on biodiversity from
1183 Transpower's activities and assets; and I know that there's the exemption in the
1184 NPS-IB, are you seeking a complete exemption from all of the biodiversity
1185 provisions?
1186

1187 Whitney: No. The way I had crafted my relief in my evidence in chief was that Policy 47
1188 is operative and would still apply. You would still have those upfront clauses,
1189 matters (a) to (h), notwithstanding the additions to (h) through the evidence.
1190

1191 As part of a resource consent you would consider the connections buffering the
1192 wetlands, avoiding accumulative effects, providing seasonal or core habitat. You
1193 would still have those so there wouldn't be a policy void as such. Obviously
1194 that's for significant natural areas for identified.
1195

1196 Outside, I agree that there would be... I don't want to call it a gap, because
1197 Transpower has also outlined in Ms Shand's evidence (I think in paragraphs 44
1198 onwards or something) the process that Transpower goes through when it looks
1199 at maintenance and so forth. There is quite a structured process internally within
1200 Transpower to manage the effects.
1201

1202 I guess my concern is by imposing IE.2A as in interim one before we know what
1203 the NPS-ET is going to say. It doesn't distinguish between the maintenance
1204 upgrade and development.
1205 [01.30.00]
1206

1207 Chair Is there an amendment that you would support to Policy IE.2A, so theories
1208 outside SNAs that would give effect to the gazetted NPS-ET? So it would still
1209 bring the activities in.
1210

1211 Are you saying your relief on IE.2A is that... I know it's a brand new policy
1212 that's come out through the evidence, so it wouldn't have been addressed in your
1213 submission anyway, is that right?
1214

1215 Whitney: Correct. In my evidence in chief I sought that IE.2 blanket didn't apply to ET.
1216 Yes, agree.
1217

1218 I guess again I'll go back to the maintenance, upgrade, development and so forth.
1219 I'm reluctant at the stage we're at now, at a hearing, to put forward radical
1220 changes again where no other parties have had opportunity to input into this. It's
1221 not the ideal. I guess the significance of this to Transpower warrants a
1222 comprehensive plan process, given that the national grid is of national
1223 significance and maintain the grid through ensuring vegetation doesn't cause an
1224 issue for the grid, as outlined in Ms Shand's evidence in terms of fire, risk of
1225 trees toppling over and things like that.
1226

1227 It's a key issue for Transpower. I think it requires a robust planning framework
1228 and a robust S.32AA or 32 assessment. I'm reluctant I guess to tweak this.
1229

1230 Chair: I think if we look at progressing the relief you're seeking, I think we will also
1231 need to... because there are other submitters, and I'm thinking Forest & Bird
1232 and Director General of Conservation who apart from the coastal I think they
1233 were broadly comfortable with the carve-out in 24D. That's okay, that's not your
1234 issue.
1235

1236 I think ideally it would be really good to get all of the interested parties together
1237 on this. But, I am also aware that that also possibly creates other natural justice
1238 issues, because who do you invite – and doing that right at this stage of the
1239 hearing?
1240

1241 I will just see if anyone else has any questions.
1242

1243 Paine: More leading on from your question about natural justice and if it was decided
1244 that there was an issue with natural justice, then what does that mean for the
1245 process that we're in? I think you have skimmed over that, but would like to
1246 hear what you would think about that Ms Whitney.
1247

1248 Whitney: I guess speaking for ET it's quite a confined issue I think in terms of this plan
1249 change. I think a variation of plan change is appropriate. That would be a plan
1250 change, not a variation.
1251

1252 Wratt: A policy change not a...
1253

1254 Whitney: Yeah, a policy change. It would be a plan change that updates the policies.
1255

1256 I guess I'm just conscious as well I'm the Planning Expert for Transpower but
1257 I'm not Transpower the organisation. Other than Ms Shand's evidence which
1258 was filed before the rebuttal evidence came out, Transpower in itself as an
1259 organisation hasn't had the ability to provide for some comments on this. I can
1260 say what I think from a planning perspective. Certainly has wider implications.
1261

1262 Paine: Last question. We talked about clause 1.3 and that exemption. There has been
1263 questions of scope and what's in and what's out. If that whole thing was to be
1264 [01.35.00] put into this plan change and in place of those provisions, if that could be done,
1265 would that address your concerns or Transpower's concerns?
1266

1267 Whitney: If the relief sought in my evidence in chief for the exemptions was granted and
1268 addressed my concerns, I would certainly support another plan change. I would
1269 wait until we get any revised NPS-ET and REG. I don't know if MFE or anyone
1270 can provide an update on timing to the Panel on that, that might provide you...
1271 I have heard six months. We don't know.
1272

1273 I guess it's a similar situation with the NPS-IB, in terms of a lot of parties were
1274 always reluctant to implement the drafts. We saw how much it changed over
1275 time. This is another example of that.
1276

1277 Paine: Thank you for your insights. Thank you.
1278

1279 Chair: Others except perhaps our next submitter, which is another complicating factor.
1280 I know it's not your concern necessarily, but taking differing approaches to these
1281 draft NPS's is also complex.
1282

1283 Do you have any questions?
1284

1285 Kara-France: Thank you Ms Whitney for your presentation. Whilst I understand that the
1286 national grid is very important to Aotearoa, fundamentally obviously, I do have
1287 concerns for new development in regards to the protection of the indigenous
1288 biodiversity and indigenous species across the board. I would like you to
1289 consider the thought of the importance of those direct conversations with the
1290 Department of Conservation when those areas of concern where your assets are,
1291 are within Conservation areas; so conservation areas and protection of those
1292 areas itself on behalf of the species and biodiversity, but also for future
1293 generations.
1294

1295 So care, consideration and maintaining of your assets with them walking with
1296 you is certainly more attractive than not having them in that conversation with
1297 you.
1298

1299 I certainly understand the resource consent process in regards to having
1300 consultation process with mana whenua and tangata whenua, and including DoC
1301 and other community parties, but they are your immediate stakeholders where
1302 you need to have those conversations. Having them ignored or put aside so that
1303 you can continue with your proposals would be very concerning to me.
1304

1305 I certainly would support you and certainly support maintenance and upgrade of
1306 your assets – they're important to us; but there are considerations to take on-
1307 board (a) what I have highlighted, and the protection of the indigenous species
1308 itself, protection of indigenous biodiversity itself, and also for the future
1309 generations. I certainly support one hundred percent that you have maintenance.
1310 You have assets which need upgrading, and they are in the middle of nowhere.
1311 You do need to get to them. You do have growth happening, which are impacting
1312 on the quality service of those assets.
1313

1314 Moving forward, there still needs to be a ruling factor of people in consultation
1315 with you, which are there for a reason on behalf of us as New Zealand citizens,
1316 and the indigenous biodiversity itself.

1317
1318 Kia ora. Thank you.

1319
1320 Whitney: If I can just comment: I fully support and agree with that. I completely agree.
1321 Particularly for new development I will just refer you again to that natural
1322 resources plan Policy 14, which sets quite a structured framework for
1323 considering new development. There's a particular policy there about effects on
1324 the coastal environment, indigenous biodiversity in the coastal environment.
1325 There is quite clear 'seek to avoid' directive and then that's carried through into
1326 other district plans as well – the ones which have come up for review in the last
1327 seven years or so.

1328
1329 So there is a framework there definitely. I think as outlined in Ms Shand's
1330 evidence Transpower has quite a robust process for engaging, consulting and
1331 considering who is an interest. Particularly for new development it's a really
1332 complex process it goes through to outline those values and consider them.

1333 [01.40.00]

1334 Chair: I know we have gone over, but I just want to ask two final things.

1335
1336 I don't know if you've seen the rebuttal legal submissions that are filed by the
1337 Council. They do talk briefly about 1.3 of the NPS-IB and say that while there
1338 is that exclusion in that clause, that the Council can still put forward a policy
1339 framework to address the gap on the basis of s.6(c) and other provisions in the
1340 RMA. Obviously the functions in s.30 as well.

1341
1342 I'm interested in Policy 14 and the NRP provisions you talked about.
1343 Transpower was involved in that process and happy with the place that got to in
1344 terms of reconciling national instruments. I know the tail shouldn't wag the dog,
1345 but would there be an RPS level policy that you would support that would be
1346 consistent with Policy 14 and where the NRP got to?

1347
1348 I guess what I'm saying is, if the NRP provisions have reconciled that conflict...
1349 and those are operative now aren't they, there's now appeals?

1350
1351 Whitney: Correct.

1352
1353 Chair: Could there be a policy in the RPS that supports that approach?

1354
1355 Whitney: Potentially. Obviously that was confined to new development. It might be major
1356 upgrades if I recall. Then again it's that issue of what do you do with maintenance
1357 and so forth.

1358
1359 Certainly potentially. But, then I guess it goes to my overall concern about if
1360 things are going to change, if there's an interim, aren't we best to do it in a
1361 complete and comprehensive and accurate manner, rather than second guessing
1362 what's coming in or doing a piecemeal approach.

1363
1364 Chair: Thank you very much.

1365

1366 One thing that we do have I think is we do have some time. It might be that we
1367 get Wyeth's response on this and then potentially before the final hearing stream
1368 see if there might be an opportunity to try to do something in this space, if we
1369 support your recommendation that 24D is removed. We'll need to give that more
1370 thought.
1371
1372 Understand the issues though. I do think that these were put in, in an attempt to
1373 assist rather than to...
1374
1375 Whitney: I fully acknowledge that. This is new ground for many of us.
1376
1377 Chair: Is there anything further? Does that cover all the points you wanted to make?
1378
1379 Thank you very much for your time. Sorry for going over.
1380
1381 Whitney: Thank you.
1382
1383 **Meridian Energy**
1384
1385 Chair: Welcome to the team from Meridian Energy.
1386
1387 Andrew(?): Kia ora.
1388
1389 Chair: Kia ora. Good to see you again. You have both presented before, and I think you
1390 were here when we did introductions earlier. Also because I'm aware we've
1391 been keeping you waiting, we could just get straight to it.
1392
1393 Ms Foster we have your updated speaking notes?
1394
1395 Foster: My apologies there's two sets – one dated the 19th and delivered Monday, a little
1396 bit ahead of where I would be comfortable usually; and one prepared last night
1397 with today's date on it.
1398 [01.45.00]
1399 Wratt: To clarify that, have you amended the notes?
1400
1401 Foster: No.
1402
1403 Wratt: We've ended up with two.
1404
1405 Foster: Yes, you have two sets. A set of Monday's speaking notes with 19th February
1406 date on it and something that was submitted last night which is supplementary.
1407
1408 Wratt: I think you have called it the supplementary. We also received your original ones
1409 again.
1410
1411 Foster: One plus one.
1412
1413 Wratt: Thank you.
1414
1415 Chair: So do we just look at the ones dated 22 February?
1416

1417 Foster: No. I haven't repeated in last night's edition. The comments I made on the 19th
1418 they still stand in my opinion.
1419

1420 Andrew(?): Just by way of introduction, you've had a presentation from Transpower and
1421 Meridian shares many of the concerns that have been raised through that.
1422

1423 As you will have noted through reading the first set of speaking notes put
1424 together by Christine Foster, Meridian's Planner, I guess those issues are
1425 reasonably clear. I think it would be useful just for her to work her way through
1426 both papers and then really focus on any particular questions you have
1427

1428 I guess from Meridian's perspective Meridian as attempted to engage in a way
1429 that promotes a kind of interim solution. It's definitely seen in that context
1430 because of the status of national instruments and the potential conflicts around
1431 those; and I guess some of the age of the earlier ones, particularly the New
1432 Zealand Coastal Policy Statement.
1433

1434 I think it's best is we make use of Christine's time and then come back and
1435 answer any questions.
1436

1437 Foster: Tena tatou katoa. Ko Christine Foster ahau. Thank you for the introduction
1438 Andrew. Yes there are two sets of speaking notes, which is really just a reflection
1439 of the process that we are in. I didn't want to burden you with that.
1440

1441 I think some of the comments, the discussion you just had about process and to
1442 accommodate the relief requested by Transpower is pause for thought. There is
1443 a very real difference between the assets and activities of Meridian and other
1444 generators, and electricity transmission assets and activities. I think there's a
1445 danger in lumping us, if you like, that sector together, because the subtleties
1446 can't be reconciled in quite the same way.
1447

1448 The attempts that I made through evidence and through speaking notes, which
1449 is an unusual way of approaching things, but it was compulsory, was to be
1450 realistic about the assets and activities that this generator has in this region and
1451 the impact of whatever the gap is in an interim period. The risk of having nothing
1452 in a plan or something that's particularly directive in a highly restrict way, which
1453 swims against the tide.
1454

1455 It's not just an exposure draft of and NPS-REG replacement. There is mandate.
1456 I think the Panel can be reassured that there is mandate for enabling more than
1457 in the past REG activities and ET activities, because of legislation to respond to
1458 the challenges of climate change. There was a climate change commissioned and
1459 there is a strategy.
1460

1461 It's not that I rely on draft exposure documents. The tide is shifting and it's
1462 important to recognise that.
1463

1464 With that, I just want to also say that I of course confirm that I have abided and
1465 will continue to abide the Code of Conduct that I said in my statement of
1466 evidence.
1467

1468 If I can start with the set of notes with a footnote dated the 19th of the second
1469 (February), that's Monday. The overarching issues that I want to set out there
1470 are very similar to what Ms Whitney has described to you.

1471
1472 When one looks through the set of changes the black stuff is what was in the
1473 publicly notified PC1. The red stuff came through evidence. The blue stuff came
1474 through rebuttal.

[01.50.00]

1475 As I will say a little later on, Meridian chose to engage with that in the very
1476 constructive way because the risks are different for Meridian's actual assets in
1477 this region and were seen as perhaps manageable. But, Ms Whitney is not wrong
1478 in what she says.

1479 There are questions I think around scope. It's a little opaque to me. I haven't had
1480 a chance to dissect everything. I don't actually think it's my job to do that, to
1481 find out what the scope is and reassure you that changes can be made. But, I
1482 think that's an important step for you, for the risk to a decision.

1483
1484
1485 There has been no opportunity for meaningful discussion with the officers
1486 through this drafting process.

1487
1488 There are only two agencies concerned about the NPS-IB Part 1.33 and they're
1489 both here.

1490
1491 It has been difficult to describe the issues arising and respond to the changes
1492 through rebuttal, and I don't envy your task in having to reconcile what you are
1493 now presented with. It's generally not an optimal process. My thought was that
1494 the process would benefit from some discussion between experts to test thinking,
1495 and even to test the ideas that were discussed around sitting on a completely
1496 different path. That's important.

1497
1498 The 19th of February set has seven headings. Most of them are non-controversial.
1499 The first one relates to a part of the S.42A that Ms Guest wrote in relation to use
1500 of the word 'natural' when referring to natural wetlands. We are in agreement,
1501 so I will just skip over those matters. You can take that as read.

1502
1503 Similarly with objectives 16 and 16A, so items 2 and 3 of mine, Ms Guest
1504 commented on Tuesday that she was reluctant to make those amendments. She
1505 has agreed with them. I understand her point. She generally doesn't like
1506 qualifiers, but she has accepted that point.

1507
1508 Then we move to Policy 24 and Appendix 1A. I have set out there some
1509 reasoning. I have included Meridian's preferred changes are the black/grey
1510 shaded. I hope that's able to be distinguished there. I don't put forward these
1511 changes as being the answer to absolutely everything, but an attempt.

1512
1513 I will start at 4.1. I did address Policy 24 in Appendix 1A in s.8 of my statement
1514 of evidence dated 30th January. The discussion of Policy 24 in Mr Wyeth's
1515 rebuttal does not acknowledge the evidence on those provisions, although he
1516 arrives at the same conclusion as me, that there should be a specific and separate
1517 policy addressing the so-called gap created by NPS-IB, Policy 1.33.

1518

1519 This statement concentrates specifically on REG. This recognises the clear
1520 direction in that provision and that a more enabling approach should be included
1521 in plans for REG and ET.

1522
1523 My Wyeth proposes a new Policy 24D and that was very similar to the policy
1524 that I proposed as 24B in my evidence, but he has expanded it to also include
1525 ET.

1526
1527 In Mr Wyeth's rebuttal version, Policy 24, and it's an existing policy in the plan
1528 which has been modified to respond to the issues he identifies; where he
1529 proposes that it now be an umbrella policy from which there would hang three
1530 new policies directing that regional and district plans include provisions to
1531 protect indigenous biodiversity. In fact that there is four, because 24A is
1532 principles of biodiversity, offsetting and compensation.

1533
1534 But, for activities he proposes 24B to manage effects in the terrestrial
1535 environment; 24C to manage effects on indigenous biodiversity values in the
1536 coastal environment.

1537
1538 That does not address all effects in the coastal environment, it addresses just
1539 NZCPS Policy 11A, full list, and Policy 11B, but just the first part of it, which
1540 is avoiding significant adverse effects.

1541
1542 The other parts of Policy 11B are silent in his 24C, meaning that it is open in the
1543 directions of 24B and 24D to address that latter part, and how you manage non-
1544 significant effects on 11B sites and species, and he does through 24B and 24D.

[01.55.00]

1545
1546 That is not obvious in the framework, but his 14A and 24C do not replicate in
1547 full those NZCPS policies – just the 'avoid' bits and not the 'manage' bits. It
1548 took me a wee while to work that out. It may not be apparent.

1549
1550 He proposes 24D to manage adverse effects of REG and ET on significant
1551 indigenous biodiversity values.

1552
1553 My view is that Policy 24 has become a little bit redundant now. There was a
1554 discussion on Tuesday about that possibility and he conceded that that's
1555 possible.

1556
1557 Chair: Ms Foster, sorry to interrupt. I am looking at Policy 11. Is that because the
1558 chapeaux of that policy is 'protect' and 24C talks about 'manage'?

1559
1560 Foster: No. I think it's more simple than that. It's that Mr Wyeth's 24C talks about... his
1561 sub-clause (1) of 24 is straight forward. That's the whole of NZCPS 11A.

1562
1563 Number 2... oh, I might have that wrong actually. I thought it was 'avoid' and
1564 he had just picked up the 'avoid' part of that. I'm wrong in that, so I will correct
1565 that. I had read that wrongly.

1566
1567 Chair: Sorry for the interruption.

1568
1569 Foster: That's fine. Thank you. That's important. I will just hear that in mind as I go
1570 forward. Thank you. It probably doesn't change the points I get to in terms of

1571 mandate or freedom that you have to include a direction to provide for offsetting
1572 compensation. That seems to be the open question.

1573
1574 I would just say that if Policy 4 is retained, it should be amended to clarify that
1575 the only Policy direction applicable for REG (and I will confine my comments
1576 to REG) is Policy 24D and not Policy 24B. I understood that from his answers
1577 the other day, but I think it can simply be made clear. It's not clear at the moment.
1578 Chair: So everything is [01.57.54] within 24D?

1579
1580 Foster: D, that's right, read alongside 24C.

1581
1582 Policy 24A sets out the principles to apply to biodiversity offsetting and
1583 compensation. He proposes the new 24D, and that includes its own set of
1584 principles for biodiversity offsetting and compensation; so in my opinion there's
1585 no need. It's simply a duplication to refer back to 24A, because 24A does other
1586 things than just the principles of biodiversity, offsetting and compensation that
1587 24D does. It takes a more absolutist approach, which I think is contrary to the
1588 mandate that exists now for better enabling this particular form of infrastructure
1589 of national importance.

1590
1591 For the reason I explained in s.8 of my evidence, it remains my opinion that REG
1592 and ET should have their own set of principles as intended by the NPS-IB,
1593 through whatever process. The intention appears to be apply only the Appendix
1594 1C and 1D – so that's Policy 24D specific principles that he now proposes to
1595 bring from the relevant exposure drafts into an Appendix in the plan. It's not
1596 crystal clear and it could be improved. I've made an attempt at doing exactly
1597 that.

1598
1599 I thought that to perhaps avoid and it just makes a little more logic in the
1600 framework if the principle follow the direction for how you manage. That's
1601 entirely over to a regional council I think.

1602
1603 I have just set out some proposed amendments, the important one of which is in
1604 24A. It's explicit that it does not apply to REG activities. I've included side notes
1605 to explain the reasons for that.

1606 [02.00.00]

1607 Unfortunately that's made the font very small and I apologise for that.

1608
1609 I have just tidied up some confusion in the references to the guidelines and what
1610 they actually deal with. There was questions raised on Tuesday about the merits
1611 of including references to aquatic offsetting. I was reasonably relaxed about it
1612 because the wording of those principles is almost identical and I understand why
1613 Mr Wyeth has provided them in that way. I just have questions around scope for
1614 doing that.

1615
1616 In 24B, just a simple exception provided to make it explicit that it doesn't apply.

1617
1618 Just perhaps a correction in the chapeaux for that. I thought it should apply to
1619 regional plans as well as district plans.

1620
1621 I haven't got into the detail of the long list of who's in and who's out in Policy
1622 24B because Meridian's interest is really in 24D.

1623
1624 The explanation to 24B again is a signpost directing people to 24D for REG and
1625 ET.

1626
1627 Then in the coastal policy I didn't have any particular issues with that, for the
1628 reasons I explained in my supplementary statement. The basic regime of that has
1629 been accepted in principle by Meridian through the natural resources plan, on
1630 the understanding that the NZCPS is able to be reconciled with all the other
1631 higher order directions and provide for a management framework, including
1632 offsetting and compensation outside effects on 11A and significant effects on
1633 11B; so it's all the other effects.

1634
1635 I'll speak about that a little bit more in a minute.

1636
1637 Policy 47 which exists already, that was made by Ms Whitney this morning. My
1638 Wyeth has proposed adding a consideration specifically for REG and ET
1639 reflecting the exemption provided for in the NPS-IB. So still have to consider
1640 those things but the exemption in the NPS-IB suggests that there are particular
1641 requirements for REG and they need to be taken into account.

1642
1643 I have just got some questions around proposed Policy IE.2A which came out of
1644 a proposal in evidence. It is just not clear to me what the line of sight is back to
1645 the submission points. I do make that point a couple of times.

1646
1647 Mr Wyeth does not consider that Meridian's suggestion that REG should have
1648 a blanket exemption for Policy IE.2A. Rather he thinks the management
1649 framework reflects on non-significant indigenous biodiversity should reflect the
1650 guidance given in the exposure draft for REG – and that is to avoid, remedy or
1651 mitigate to the extent practicable. I understand Meridian is comfortable with that
1652 approach. I can see that it's workable for REG assets in this region, because
1653 being able to demonstrate what is practicable particularly for existing assets that
1654 might be being upgraded, I think will be plain at the time.

1655
1656 It's a very different scenario from the multitude situations and combinations that
1657 you would get with electricity transmission. It's just a simpler beast. I'm sorry
1658 to call it that, but that's my view.

1659
1660 I do make the suggestion that given we are dealing with in Policy IE.2A non-
1661 significant indigenous biodiversity that the threshold for addressing effects
1662 should not be all effects. It should be significant adverse effects.

1663
1664 When we are dealing with the impacts of REG, a nationally important matter,
1665 and non-significant indigenous biodiversity which does not have a s.6(c), may
1666 have a 6(e) – may have importance of value that the threshold should not be 'all'
1667 it should be 'significant'. No more than minor perhaps but certain significant.
1668 There should be a real issue at play in my opinion.

1669
1670 In the way that this policy was constructed, it appeared that there was a more
1671 [02.05.00] stringent approach being proposed for REG than for other infrastructure. I have
1672 just suggested some changes that remove that. I don't think that was Mr Wyeth's
1673 intention. I think he clarified that on Tuesday.

1674

1675 In 6.3 I just note the lesser complexity of REG and the extent practicable being
1676 a reasonable test for them. I think it was touched on before, just some possible
1677 confusion about whether the first two clauses of IE.2A apply as well as to REG.
1678 I don't think that's the intention. There are many ways of fixing that and I have
1679 just suggested one, which was to say, REG first, that's how we deal with you,
1680 and then everyone else. So I think that is an issue in the structure.

1681
1682 There are definitions and I don't take issue with any of the definitions for REG.
1683 I think Ms Whitney is right, that the NPS-IB exceptions are based on definitions
1684 and assets and activities and there's just a little wee loop missing there.

1685
1686 Shall I just carry on and deal with the last notes update/supplement? It should
1687 be read together with the 19th of February that I have just gone through.

1688
1689 I sat in on the morning of Tuesday, your opening morning of Hearing Stream
1690 Six and there was just a little bit of discussion that I felt lacked historical context.
1691 It seemed to me particularly that people were casting around for case law or
1692 mandate, or reassurance that certain pathways were open to them. I just kept
1693 thinking 'I feel I've been here before,' and I just felt the need to highlight those
1694 points to you.

1695
1696 I have just got a couple of additional overarching issues, which reflect Ms
1697 Whitney's really – scope, change, process, provision for regionally significant
1698 infrastructure including REG and the coastal environment. There was quite a lot
1699 of discussion about that.

1700
1701 The scope for amendments that are no proposed and process.

1702
1703 The six overarching issues I identified in the 19th February speaking notes
1704 remain valid in my opinion. I am concerned about the extent and complexity of
1705 amendments being proposed through rebuttal. I am also concerned that further
1706 further substantive and equally complex amendments may be invited or
1707 proffered through further post-hearing supplementary or rebuttal evidence from
1708 officers, without opportunity for input from submitters.

1709
1710 There has been no comprehensive s. 32AA evaluation of the amendments
1711 proposed by the officers. They consistently say, and I understand their reason
1712 for this, that no s. 32AA additional evaluation is required.

1713
1714 I don't necessarily agree with that. I am guilty of not having given you one in
1715 my statement of evidence, but it is a question of how far one goes before you
1716 know whether you have a preferred option that you are evaluating against others.
1717 I would welcome and opportunity to do that. I think that doing that would make
1718 visible some of the reconciliation of higher order policy direction that need to
1719 be done and has not been done in some of the evidence for other parties.

1720
1721 It will be plain to the Hearing Panel that the amendments are not minor matters
1722 of editorial refinement. The subject matter is complex and the changes involve
1723 substantive policy matters that warrant a careful analysis of all relevant s. 32
1724 matters.

1725

1726 Having heard the discussion during the opening morning of Tuesday this week
1727 and some of the exchanges since then (I was observing by AVL) I am concerned
1728 that there is something missing from the narrative around two aspects of the
1729 amendments proposed to Policy 24: a) whether and how biodiversity offsetting
1730 can be provided for in the RPS in the coastal environment; and b) provision for
1731 infrastructure, and particularly REG and ET, in coastal environments where
1732 NZCPS Policy 11 (a) and 11 (b) ecosystems or species are present.

1733
1734 The legal submissions for RFBPS (paragraph 11) oppose any ‘carve-outs’ for
1735 REG and ET.

1736
1737 With your leave I will just press on.

1738
1739 Chair: Yes.

1740
1741 Foster: The Forest & Bird Protection Society legal submissions requested that any
1742 policy gaps created by the NPS part 1.3 (3) exception should be subject to the
1743 [02.10.00] relevant effects management hierarchies. I whole heartedly agree with that, but
1744 my point is that the focus of the discussion at the hearing that I’ve witnessed has
1745 been someone narrow and has not actually focused on all of the relevant
1746 considerations.

1747
1748 My comments are made in the context of the practical reality of one REG
1749 generator (Meridian’s) assets and activities in this region. Mine is not a
1750 theoretical view, or based on a desire to achieve national consistency on
1751 theoretical concepts. Rather it is an attempt to assist the RPS for the Wellington
1752 region to reconcile and provide meaningful guidance on competing national
1753 imperatives for the actual physical resources of this region.

1754
1755 So just as a wee bit of history, which I had assumed you may be aware of.
1756 Forgive me if you are, but I think it's useful.

1757
1758 Policy 24 has been settled in the Wellington RPS since it was made operative in
1759 2013. It is a simple direction to district and regional plans to include policies,
1760 rules and methods to protect indigenous ecosystems and habitats with significant
1761 indigenous biodiversity (not non-significant) values from inappropriate
1762 subdivision, use and development. It may not be apparent to the Hearing Panel
1763 that the relevant regional plan (the Natural Resources Plan - NRP) has completed
1764 the exercise it was directed to undertake by Policy 24.

1765
1766 The NRP was publicly notified in 2015 and became fully operative last July
1767 (after mediation of appeals during 2021).

1768
1769 The operative NRP already explicitly addresses the protection of indigenous
1770 ecosystems and habitats with significant indigenous biodiversity values within
1771 the environments for which the NRP has jurisdiction. That includes the coastal
1772 marine area, lake, riverbeds and freshwater environments, including where those
1773 environments occur in the coastal environment.

1774
1775 These distinctions in environments and jurisdictions are important in the context
1776 of the amendments Mr Wyeth proposes in his Policy 24B, which is for the
1777 terrestrial environment and that includes the terrestrial part of the coastal

1778 environment; Policy 24C (for the coastal environment, which applies to marine,
1779 terrestrial and aquatic environments in the coastal environment); and - Policy
1780 24D (for REG and ET in all environments.

1781
1782 The Natural Resources Plan provisions were settled through mediation, by
1783 consent, after reconciling the competing imperatives in relevant provisions
1784 including Part 2, the NZCPS and the NPS-REG.

1785
1786 For the coastal environment, the NRP includes Policy 38 (and I have included a
1787 suite of not just Policy 38, because it occurs in a whole suite of others that deal
1788 with managing indigenous biodiversity values.

1789
1790 For the coastal environment directly addresses NZCPS Policy 11 (a) and (b). It's
1791 in three parts. In clause (a) it requires complete avoidance of all effects on 11(a)
1792 sites and species, and the avoidance directive of Policy 11(a) was accepted by
1793 the parties including Meridian at the time and that position has not changed for
1794 Meridian as I understand it.

1795
1796 Clause (b) reflects Policy 11(b) in requiring avoidance of significant adverse
1797 effects.

1798
1799 Clause (c) provides for the management of non-significant adverse effects of
1800 Policy 11(b) sites and species through an effects management hierarchy that
1801 includes the option of biodiversity offsetting and, for regionally significant
1802 infrastructure including REG only for those activities. It includes the option of
1803 biodiversity compensation.

1804
1805 Clause (d) provides for the management of significant adverse effects on other
1806 indigenous biodiversity values elsewhere in the coastal environment and also
1807 applies an effects management hierarchy that includes biodiversity offsetting
1808 and compensation.

1809
1810 I was involved in the discussions to create this RP38. It is quite complex, but it
1811 works alongside others to make sure all of the indigenous biodiversity is picked
1812 up by one policy or another. I have included that.

1813
1814 These provisions were settled by consent between this council and appellant
1815 parties (including Meridian, the Wellington International Airport, and I
1816 understand Forest and Bird) and, in respect of the coastal marine area, were
1817 signed off by the Minister of Conservation (because they applied to coastal plan
1818 provisions – that's material in my view. It's quite a mandate.

1819
1820 [02.15.00] These policies must be presumed to give effect to the NZCPS. Nothing has
1821 changed in the NZCPS since that time. The NRP provisions were settled
1822 following careful analysis of all of the competing high order imperatives
1823 relevant for the coastal environment at that time, and can be considered now to
1824 be settled and complete.

1825
1826 There is no basis for the view that the biodiversity offsetting and biodiversity
1827 compensation provisions in Policy P38 are somehow not allowed by, or
1828 contravene the New Zealand Coastal Policy Statement. I am not saying that the
1829 tail should wag the dog in the sense that a plan should direct the Regional Policy

1830 Statement. I'm just saying I've been here before and it is not the case that there
1831 isn't a way through reconciling. That was done at a time before the Council and
1832 other parties were experiencing the shift in policy nationally, which has actually
1833 formed part of the basis of Plan Change 1 itself. It's inherent. It's built into the
1834 objectives for it, which are to respond to climate change challenges and enable
1835 activities that do that.

1836
1837 I just feel that some of that thinking has not moved on, but certainly back then it
1838 was able to be reconciled, including by the Minister of Conservation.

1839
1840 But, also I do make the point that it is reasonable to expect in my opinion that a
1841 regional plan made operative as recently as July 2023 would continue to be
1842 operative for some years yet. One would hope that there was a lot of resource
1843 thrown at that process, without unsettling fundamental policy frameworks.

1844
1845 That must be particularly so where (for the coastal environment) there has been
1846 no change in higher order policy instruments to suggest the approach taken in
1847 the NRP has become invalid.

1848
1849 The approaches being proposed to you by some parties would create a direction
1850 in Policy 24 that would unsettle the now settled NRP approach, based on
1851 consideration of only part of the higher order policy framework – (in other
1852 words, a very narrow focus on what the words in Policy 11(a) and (b) of the
1853 NZCPS say.

1854
1855 There seems to be agreement that the NZCPS prevails over the NPS-IB where
1856 there is conflict between those two policy statements, and that's explicit in part
1857 1.4 (2) of the NPS-IB. However, the NPS-IB and the NZCPS are not the only
1858 considerations to be analysed in formulating plan provisions for managing
1859 indigenous biodiversity values (including in the coastal environment).

1860
1861 While it is correct to say that the NZCPS prevails over the NPS-IB where there
1862 is conflict between those two instruments, it is not correct that the NZCPS
1863 prevails over all other considerations. There are also other National Policy
1864 Statement considerations and I have listed those there. There are other
1865 considerations even in the NZCPS and I have listed those out.

1866
1867 Firstly, that some uses and developments which depend upon the use of natural
1868 and physical resources in the coastal environment are important to the social,
1869 economic and cultural wellbeing of people and communities; some uses and
1870 developments can only be located on the coast or in the coastal marine area; and
1871 the coastal environment contains renewable energy resources of significant
1872 value.

1873
1874 I think the first two points are particularly important where you're dealing with
1875 existing assets and activities that can't shift easily. I found disappointing frankly
1876 the answer given to you to the question put to counsel for the Forest & Bird
1877 Protection Society, where that places an asset and activities like an international
1878 airport. I felt that was an insufficient answer, given the other policy
1879 considerations frankly.

1880

1881 I have referred to Policy 6, which really reflects the objective that I have talked
1882 through, so I won't talk about that. It says much the same thing.
1883
1884 There is also the NPS-FM, the NPS-REG and NPS-ET, and there are other Part
1885 2 RMA considerations including efficiency.
1886
1887 Settling plan provisions for the management of indigenous biodiversity values
1888 will not be, cannot be in my opinion a contest of values between only the NPS-
1889 IB and the NZCPS. As directed by the *Port Otago Decision*, which I think we
1890 all understand which one that is, a comprehensive analysis of all the relevant
1891 higher order policy order imperatives is required.
1892
1893 Perhaps inadvertently, Mr Wyeth's proposed Policy 24C, gives the impression
1894 that NZCPS Policies 11 (a) and 11 (b) are the only considerations and, indeed,
1895 the sole purpose for managing adverse effects on indigenous biodiversity in the
1896 coastal environment.
1897
1898 [02.20.00] But, actually, in the framework Mr Wyeth proposes he includes pathways in
1899 Policies 24B and 24D that do that that reconciliation already. So it appears to be
1900 restricting but he has actually done some reconciliation already and provided for
1901 24B and 24D.
1902
1903 In that, he includes effects management hierarchies which include biodiversity
1904 offsetting and biodiversity compensation.
1905
1906 I think it still stands that these are only available to sites that are not 11(a) sites
1907 and species and for non-significant adverse effects on Policy 11(b) sites, and if
1908 that's not the intention, I think that's what it ought to be. That direction of avoid
1909 in both those parts of 11 is clear. And that would be entirely consistent with the
1910 NZCPS in my view, as demonstrated by the P38 example I have given you now.
1911
1912 I do not read the NZCPS as explicitly preventing a Council from including an
1913 effects management hierarchy in a district plan or in the Natural Resources Plan,
1914 for the management of non-significant adverse effects on NZCPS Policy 11 (b)
1915 sites and species.
1916
1917 The NZCPS is a product of its time and reflects the language of s. 5 (2) (c) of
1918 the Act, in describing an effects management framework.
1919
1920 The effects management framework of the RMA has moved on itself since then
1921 and now also contemplates offsetting and compensation.
1922
1923 Through amendments to the RMA made in 2017, s. 104 and s. 171 require
1924 decision makers on applications for consent and designations to have regard and
1925 particular regard (there's a slight different there, but respectively) to any
1926 measure proposed by an application for the purpose of ensuring positive effects
1927 to offset or compensate for any adverse effects.
1928
1929 That has been achieved in spite of s. 5 (2)(c) - not explicitly referring to
1930 offsetting or compensation.
1931

1932 Similarly, the NPS-IB contemplates biodiversity offsetting and compensation,
1933 also in spite of the narrow wording of s. 5 (2)(c).
1934

1935 The exposure drafts of the replacement NPS-REG and NPS-ET also reflect the
1936 movement in thinking about what constitutes an effects management framework
1937 – and I think that’s what we were actually saying, there has been a movement in
1938 thinking about what it means; and by explicitly providing for bespoke effects
1939 management hierarchies (that include offsetting and compensation).
1940

1941 This is intended to be more enabling of REG and ET activities in responding to
1942 today’s (not 2010’s but today’s) challenges associated with the effects of climate
1943 change and commitments to transition from non-renewable to renewable energy
1944 sources.
1945

1946 I will just reiterate the comment I made before that I don’t rely entirely on those
1947 things, because they themselves have a mandate that has been legislated through
1948 climate change legislation.
1949

1950 Limiting the ability to respond to these challenges by a narrow reading of a 2010
1951 policy instrument is counter-productive in my view.
1952

1953 It is a stretch, in my opinion, to read Policy 11 (b) of the NZCPS as meaning the
1954 NZCPS explicitly prevents the use of biodiversity offsetting and biodiversity
1955 compensation in the management of nonsignificant adverse effects in specified
1956 coastal locations. Especially where there is no case law supporting this assertion.
1957

1958 The Council’s rebuttal legal submissions are noted that there is no case law that
1959 is determinative (and Ms Anderson confirmed that point on Tuesday), on
1960 whether offsetting is available for NZCPS Policy 11 sites other than Policy 11
1961 (a) sites (however she also noted that there is no case law suggesting it is not
1962 open to you).
1963

1964 Pardon my rant on that topic, but I just felt in light of discussion on Tuesday that
1965 might be helpful.

1966 Scope: The discussion and officers’ answers to questions at the Hearing to date
1967 have not answered the question I raised in my evidence about the scope for
1968 Policy IE.2A. Also, it remains unclear to me exactly which submission points
1969 provide the scope for Police 24C.
1970

1971 They appear to be being introduced under the very broad umbrella of being a
1972 subset of ‘indigenous biodiversity’.
1973

1974 The amended provisions as now proposed look completely different from those
1975 in the publicly notified PC1 and there is not a clear line of sight to the relief
1976 requested in submission points for all of them, in my opinion.
1977

1978 I have been clear, in my evidence, about which submission points of Meridian’s
1979 my suggested amendments relate to. However, with the complexity of
1980 amendments now proposed through rebuttal evidence, it is becoming a little
1981 unclear exactly which proposed submission points are relied on for the
1982 amendments proposed.
1983 [02.25.10]

1984 It is difficult to conclude that the scope and complexity of some of the
1985 amendments now proposed could have been anticipated by reading PC1, the s.
1986 32 report or the submissions. It would be useful if the reporting officers could
1987 identify the specific submission point numbers they rely on for introducing the
1988 Policy 24 and Policy IE.2A amendments in particular, but also for other
1989 substantive amendments.

1990
1991 It's very old fashioned but I think useful for discipline.

1992
1993 Process: in the spirit of contributing constructively to these proceedings, I have
1994 responded to the extensive amendments proposed in the s. 42A report and in
1995 their rebuttal statements. However, given the short time available and the
1996 complexity of the proposed amendments, I cannot claim that my suggested
1997 amendments will be completely bulletproof. I fully expect they could be
1998 improved.

1999
2000 And, just to the point that was discussed with Ms Whitney, it is not clear how
2001 you as a Panel intend to proceed with the proposed amendments and the variants
2002 that are not being proposed by submitters and officers.

2003
2004 I reiterate the suggestion made in my speaking notes of Monday, that it may
2005 assist if there is an opportunity for parties to examine the detail of the proposed
2006 wording, and explore s.32AA as well I think; but that may require a direction
2007 from you and it is my experience that those processes are weak unless there is a
2008 clear indication from the Panel as to your preliminary thinking on things, and all
2009 clear questions to be answered.

2010
2011 Hopefully that answers your questions.

2012
2013 Chair: Thank you very much. There's a lot of information in there that will be really
2014 helpful for us in our deliberations.

2015 We have just been reminded we have gone quite over time, but it is just leading
2016 into the lunch break. If you have all got a few minutes we will take some
2017 questions.

2018
2019 Ms Foster, the point about Policy IE.2, you questioned scope. The text and the
2020 explanation also points to this. I can't remember exactly which submitters, but I
2021 think there is some reference to some submitters saying that there is currently a
2022 gap for maintaining non-significant indigenous biodiversity, but also the
2023 function and s.30 of the RMA which applies to all biodiversity in the region.
2024 This is a point I picked up with Transpower. I appreciate this policy is new and
2025 in an ideal world there would have been opportunity for everyone to be able to
2026 comment on it in their submissions, but if it comes out there's going to be a gap
2027 for maintaining biodiversity non-significant areas, and the technical evidence is
2028 that the regional can't afford to do that because it's in such a dire state; and we
2029 need to do something. Status quo is not working.

2030
2031 How would be addressed if Policy IE.2A was to be deleted.

2032
2033 Foster: I guess that goes to how the issue was framed for the s.32. I haven't examined
2034 that. I thought the approach of Plan Change 1 was addressing significant
2035 indigenous biodiversity. I think it's a simple examination of that. But, I agree.

2036
2037 I don't hold to the view that the exception provided in the NPS-IB part 133
2038 means that the plan should do nothing, because the Council has other obligations
2039 under s.6. It's for that reason that Meridian has proposed a way forward.
2040 [02.30.00]
2041 It is a challenge for you. I haven't picked up the requested relief that says,
2042 "Please put this in your plan." I don't think it's there. If it's there, that's good. I
2043 am just being lazy and saying, "I don't think that's my job." It was very opaque
2044 to me through the S.42A Report.
2045
2046 I'm not relying on that to say, "Knock it down, whack-a-mole." I'm comfortable,
2047 subject to the changes I proposed.
2048
2049 Andrew(?): Just to add to that a little bit, I guess what the Panel have to think about in terms
2050 of the way the plan change is framed, in terms of a question it possibly needs to
2051 ask itself, if it within scope. If the plan change is only about significant
2052 indigenous vegetation, then arguably if there was a submission on that issue it
2053 wouldn't be within scope to then diverge to non-significant vegetation. That's
2054 an issue about going back and exploring what they'd change.
2055
2056 Foster: I haven't so I'm not able to assist you as perhaps fully as I could. But, that's
2057 where it lies.
2058
2059 Chair: It is addressed in the NPS-IB and this Proposed Plan Change 1 is about giving
2060 effect to the NPS-IB.
2061
2062 Foster: To the extent there is scope in submissions. I think that becomes rather circular.
2063
2064 Chair: It does become circular.
2065
2066 Foster: I think that was really the point I was making, that that is not the whole answer.
2067 You are able to give effect to it, to the extent that that topic has been raised. The
2068 solution requested has been raised in submissions.
2069
2070 Chair: In my head I'm just wondering if it creates quite a conundrum, because the risk
2071 of overly simplifying. You've suggested amendments that can make this policy
2072 sweet, that the Officers support work with changes. It's probably not really fair
2073 to ask you if you think that would create issues for other infrastructure providers
2074 like Transpower.
2075
2076 Foster: It's a totally fair question. I just think they are such different activities and assets,
2077 that I can see that this can be made to work for REG because they are static.
2078
2079 The other significant difference between them is that they require a consent
2080 where they're proposed new. That's the same. But, for this interim period, I'm
2081 not aware of any new being on the books, so the risk is low. Meridian holds
2082 consents for all of its assets. It's not the case that they need consents to do a lot
2083 of activities. Their maintenance etc. The upgrading, yes. The directions are
2084 important for upgrading. But, again where that arises I think tests like to the
2085 extent practicable and scale and intensity of existing are obvious in my
2086 experience with these things.
2087

2088 Wratt: Can I just clarify in relation to Policy 24D? In essence what I am hearing from
2089 you, with maybe some refinements, you are in essence comfortable with that
2090 being a Policy 4 renewable energy generation?
2091

2092 Foster: Yes, I proposed it in my evidence as a Policy 4 REG.
2093

2094 Wratt: So, essentially if we were to agree with Transpower, we would just take
2095 electricity transmission out of that policy and leave it sitting there.
2096

2097 Foster: It's just that we can't be lumped together I think, and that's the point I'm making
2098 in the evidence.
2099

2100 It looks odd, but until you understand that point.
2101

2102 Wratt: I think it's clear from your submission and from Transpower what the differences
2103 are in your activities, that create this situation.
2104

2105 Also, they expressed concerns about the NPS-ET, the exposure draft, being used
2106 [02.35.00] – I guess that whole concept of caucusing at this stage when that NPS-ET draft
2107 they see it as there is still potential for significant changes. Again, it doesn't
2108 sound like you have similar concerns with the NSP-REG.
2109

2110 Foster: No. It goes again to the differences between the kinds of assets. It's a point that
2111 I discussed with Meridian before preparing evidence; was to understand what
2112 their submissions had been. Their submission on the exposure draft were
2113 different – less concerned because of the differences that I have highlighted.
2114

2115 I think if it was just a brilliant idea that Mr Wyeth had of using those words, not
2116 attributed anywhere, it provides a workable solution which is preferable to
2117 having the more stringent proposal of Policy 24 and Appendix 1A.
2118

2119 Meridian's submission and further submissions on this point are really simple:
2120 exclude REG or actually delete those changes. So quite broad scope there.
2121 Because they don't work for REG.
2122

2123 If we just saw Mr Wyeth's recommendations as suggestions and you look at
2124 them, they do work because they provide a pathway that Meridian is known to
2125 be comfortable with. I have tested, and he can contradict this morning if he
2126 wishes. We have tested that.
2127

2128 For an interim period I thought it gave some reassurance as well. It provides a
2129 framework. We don't know how long it will be for.
2130

2131 Wratt: On the basis that you propose essentially that policy within your evidence, you
2132 would say that that is within scope for renewable energy generation?
2133

2134 Foster: Yes, I think is a lesser or alternative form of relief to deletion of the changes. I
2135 consider that's within scope, yes. It's explicitly requested.
2136

2137 Wratt: You've suggested that you think it would be useful for some caucusing around
2138 some of the wording that's now; whereas Transpower are saying they don't think
2139 it's the appropriate time to be doing that.

2140
2141 So if we were to have caucusing would that just be between you and the...
2142
2143 Chair: Commissioner Wratt that's not how I read Transpower. I think they are
2144 reasonable open to caucusing.
2145
2146 Foster: I think the nature of the task that you were to set would be important. There's
2147 two levels one could do it at. One could do it at the talking to parties, because
2148 there are parties here who have not got expert evidence of any kind. I think the
2149 questions that are challenging here, are the planning questions, the policy
2150 questions – so maybe its experts rather than going to entities.
2151
2152 The questions need to be quite explicit. I think the first one is around what should
2153 the process be? What is the right pathway for maybe different activities?
2154
2155 I accept Ms Whitney's points about in an ideal world and making sure that all
2156 parties interests are protected in a natural justice sense; weighed against the duty
2157 to give effect as soon as reasonably practicable.
2158
2159 I think that's one question. The other is how different activities should be treated
2160 and whether that should be by straight exemption, or whether something else
2161 should be explored. Some of those in-principle matters first, if that's helpful.
2162
2163 Wratt: Thank you.
2164
2165 Chair: Transpower spoke quite a bit about their gazetted NPS. Are there any issues? I
2166 know the NPS-REG is different – there's not a 'seek to avoid' policy for example
2167 in sensitive environments.
2168
2169 Do you see any issues, or is there any sort of clash, any risk of non-alignment,
2170 if Policy 24D (the version you're supporting) if we were to recommend that, are
2171 there any issues with the alignment with the gazetted NPS-REG.
2172 [02.40.00]
2173 Foster: I hadn't identified any. I think there are at the moment in the publicly notified
2174 version of Policy 24 and the relationship with 1A. I think that goes against the
2175 recognise and provide for benefits of the gazetted 2000 and whatever year it is,
2176 NPS-REG. I think the solutions that I was suggesting are consistent with that.
2177
2178 There are enabling policies that just recognise and provide for rather than
2179 actually enable – which is a discussion we had in the hearing stream on climate
2180 change.
2181
2182 Chair: I think just one final question from me because we are out of time.
2183
2184 The relief that you are now supporting on these provisions, would you say as a
2185 very experienced planning expert that the NRP operative provisions would flow
2186 well from them and that there's no inconsistency of approach, no misalignment
2187 between what you're supporting and the NRP provisions?
2188
2189 Foster: I haven't done that analysis. My sense of it, going back and re-reading those,
2190 particularly P38 and the enabling P14 and the objectives that run alongside that,
2191 that they are not undone. They would be supported by rather than undone by

2192 those suggestions. That would be another task perhaps for experts. And, then to
2193 ask whether that is capable of remediation and whether you can fix that. That's
2194 a good question. Thank you.

2195
2196 Chair: Thank you very, very much. A lot to cover there. Just briefly, I think you made
2197 some reference about being lazy, and I can just say, "Absolutely not." We really
2198 appreciate the thoroughness and attention you have brought to these provisions.

2199
2200 When I initially read the rebuttal I thought, 'Fantastic, this issue can be ticked
2201 off simply.' But, after today, no, we need to give it a lot more thought.

2202
2203 Thanks very much.

2204
2205 Foster: Thank you.

2206
2207 Andrew: Thank you.

2208 Chair: We'll have the lunch break now and we will return at one o'clock.

2209
2210 [Lunch break taken 02.43.10]

2211
2212 **Waka Kotahi – New Zealand Transport Agency**
2213
2214 Chair: Kia ora koutou. Welcome back to the hearing of submissions on Hearing Stream
2215 6 – Indigenous Ecosystems. This is the afternoon session. We welcome Waka
2216 Kotahi, New Zealand Transport Agency.

2217
2218 Kia ora Ms Heppelthwaite. Do we have someone else joining you?

2219
2220 Heppelthwaite: Yes Mr Keating is here. He is joining us. Evan would you like to introduce
2221 yourself.

2222
2223 Keating: Kia ora koutou. Evan Keating here representing New Zealand Transport
2224 Agency, Waka Kotahi. Here to assist Ms Heppelthwaite and answer any
2225 questions if they come up.

2226
2227 Chair: Thank you. You have both presented before. Would you like us to introduce
2228 ourselves again to you, or are you happy that you know who we are?

2229
2230 Heppelthwaite: That's fine, thank you Ma'am.

2231
2232 Chair: We'll move on.

2233
2234 I will just check that we have all of the documents. We have your planning
2235 evidence, and there were speaking notes. We have pre-read those, but feel free
2236 to take us to the key points. I'm sure we'll have questions for you after that.
2237 Thank you. Over to you.

2238
2239 Heppelthwaite: Thank you Ma'am. Firstly my apologies for the late filing on those. I was on
2240 leave on Monday and Tuesday, so couldn't quite find the time. I appreciate that
2241 you have taken the opportunity to read them.

2242 [02.45.00]

2243 I have listened intermittently this morning to the other presenters that have
2244 appeared, the other planning witnesses in particular. I just thought I would
2245 preface running through my speaking notes, just a couple of things which I think
2246 the other planners have covered, which I thought might be helpful.

2247
2248 The first one of those is really just to point out that my focus of both the primary
2249 statement and speaking statement is on regionally significant infrastructure and
2250 that I have looked to focus on the provisions which have been presented by Ms
2251 Guest and Mr Wyeth, and have left questions of scope which have been
2252 addressed quite extensively, or questioned extensively by other planners earlier
2253 on; so I haven't sought to touch on those – that's been a deliberate choice.

2254
2255 There's been some talk of caucusing. I would indicate of course my willingness
2256 to attend and partake in that. In particular there are a few relatively confined
2257 matters, although with quite broad applications, which remain outstanding
2258 which I will come to. I think there would be some benefit if caucusing was
2259 available for those and I will return to that.

2260
2261 Again, as more of an overview, most of the matters which I address in my
2262 primary evidence have been for me satisfactorily addressed by Ms Guest and Mr
2263 Wyeth. Waka Kotahi had a relatively confined range of submissions on this
2264 particular topic. With that in mind, I would just perhaps refer to my summary
2265 statement from today.

2266
2267 Sections 1 and 2 confirm my introduction that I have provided a primary
2268 statement and will continue to comply with the Code of Conduct; and section 2
2269 just refers to the fact that I am addressing primarily the rebuttal evidence.

2270
2271 Section 3 which is on page-2 sets out five items: Objective 16, Policies 24, 24A
2272 and B, IE.2A, anticipated environmental results at 3.3 and the definition of
2273 indigenous ecosystems.

2274
2275 Broadly I propose changes to those in my primary evidence. Ms Guest and Ms
2276 Wyeth have made a range of changes and they are generally acceptable. The
2277 relief which they have proposed doesn't necessarily mimic what I have asked
2278 for, but they have proposed alternative wording or phraseology which resolves
2279 the primary concern I have put forward – even though the actual wording I have
2280 put forward might not be adopted. That's particularly the case for Objective 16
2281 which is referenced at 3.0, Policy IE.2A which is at 3.2, and the anticipating
2282 environmental results at 3.3.

2283
2284 This morning I noted a lot of discussion on the Policy 24 suite, which includes
2285 A to D. In my primary evidence which I have referred to briefly there in 3.1 I
2286 had a preference that the policy structure was a cross-reference arrangement,
2287 rather than a repetition of relevant documents. I described those in paragraph
2288 3.1.

2289
2290 The cross-referencing remains my preference but I do agree with the legal
2291 submissions of Wellington Regional Council which I have reviewed this
2292 morning, which indicate either a cross-reference or a repetition, both [02.48.44]
2293 options, and whilst I have a preference for cross-referencing I have been through
2294 and detailed those particular policies and am satisfied that Mr Wyeth has

2295 replicated to a high extent; therefore I don't have a concern with the general
2296 replication which she's adopted.

2297
2298 That really just covers areas of general agreement.

2299
2300 Moving to s.4 – Policy 24 and its associated Appendix 1A as other witnesses
2301 have alluded to, is quite a complicated area. A range of NPSs and other
2302 documents with variable language and slightly variable outcomes.

2303
2304 My focus on the changes I have made in this section I will go through this in
2305 some detail, to try and ensure that there is alignment with the relevant NPSs as
2306 far as practical – noting that there is some conflict in some locations, the NZCPS
2307 being one of them. But, also to ensure more specifically that when dealing with
2308 [02.50.00] biodiversity offsetting that looking forward to the future there is not an outright
2309 exclusion on offsetting for particularly listed species and ecosystems within
2310 Appendix 1A and particularly Table 17. I will walk through that starting at
2311 paragraph 4.0.

2312
2313 Alluding to my earlier comments, Mr Wyeth has proposed changes to 24A and
2314 B and also in 24C. I am comfortable with these.

2315
2316 I also note that the intent of 24A and Appendix 1A is to make it clear that
2317 offsetting of any one of the listed ecosystems is inappropriate unless nett gain
2318 can be achieved, and to ensure that this is assessed in a robust matter.

2319
2320 Again, I agree. I just want to be very clear on that for the Panel. I don't have a
2321 concern around whether offsetting is a valid approach when nett gain is
2322 achieved. The NPS is clear and the RPS is quite clear.

2323
2324 To address the concerns I raised in my primary evidence Mr Wyeth has proposed
2325 a new clause (d) and in particular that concern is about changes to technology
2326 occurring which allow offsetting to be put forward in an environment where it's
2327 currently indicated by Mr Wyeth and Ms Guest's provisions not to be
2328 acceptable.

2329
2330 The first italicised paragraph under my 4.2 is Mr Wyeth's commentary from the
2331 statement where in my opinion he makes it quite clear that there might be some
2332 changes that could occur in the future, that could allow offsetting, where it
2333 currently is precluded or not appropriate.

2334
2335 The second italicised text there is Mr Wyeth's version of a new 24A(d).

2336
2337 I completely appreciate Mr Wyeth's addition and endeavours to recognise future
2338 changes and knowledge, which may then allow offsetting within Table 17,
2339 [02.51.59] species and ecosystems. But, I do consider it could be more clearly
2340 articulated and that there need to be some consequential amendments within
2341 Table 17, particularly the column headed 24A(d) and its associated footnote.

2342
2343 The footnote is of particular concern because it's very specific. It talks about that
2344 it is not feasible in specified environments when referring to offsetting. Just for
2345 ease of reference I have replicated that footnote at the bottom of my page-3 in
2346 case it's difficult to locate within the items – because it is a very small item, but

2347 in my view quite critical to how Table 17 was interpreted, which then flows back
2348 through to Appendix A and then back through to Policy 24A(d) to be precise.

2349
2350 In my opinion a further change to 24A(d) is necessary, along with changes to
2351 Table 17 and footnote 4. I prefer an approach which is more enabling to provide
2352 greater flexibility to implement innovative strategies and achieve desired
2353 objectives, while tempering outcomes to reflect the NPS-IB example of when
2354 offsetting may be inappropriate.

2355 I have just done a paragraph 4.4 there in some red text, which I won't read out.
2356 That is my currently preferred reading in regard to 24(d). I will just note that I
2357 haven't had the opportunity yet to see any other party's commentary or other
2358 versions of this being put forward by the other planners. This is a matter which
2359 in my opinion caucusing could be beneficial from, both either directly with other
2360 regional councils and/or other parties who have interest in that. Again, I lead the
2361 questions of scope, appropriateness of changes and who should or would be
2362 involved in that - for parties to consider further.

2363
2364 While the amendment I put forward may seem quite enabling, it only comes into
2365 consideration where offsetting is an option within the effects management
2366 hierarchy. For example, it would not apply to areas where effects are to be
2367 avoided outright – for example, NZCPS 11A.

2368
2369 Moving then to Appendix A, Table 17, in my view possibly an even more
2370 important change that Policy 24D is amendments to ensure that the wording of
2371 Appendix A allows for offsetting to accommodate advancements in technical
2372 knowledge. I have proposed amendments and I list those further down the page,
2373 including what I think might be just a typographical error within Policy 24D, as
2374 it is explained within Appendix 1A descriptors.

2375 [02.55.00]

2376 The bullet points you see at the bottom of the page falls under the heading of
2377 Appendix 1A is not the same as Policy 24D as listed under the actual heading
2378 policy, the bullet point, as part of the explanatory text within Appendix 1A
2379 which precedes Table 17.

2380
2381 I'm sorry I'm telling you something which is really obvious, but just the way the
2382 formatting has worked out, it looks like I might be endeavouring to replicate
2383 Policy 24D when actually this wording is inside Appendix 1A and not within a
2384 policy structure.

2385
2386 On the top of page-5 is the heading for Table 17, and then immediately following
2387 that is the heading for the table which is 'Wetland Ecosystems'.

2388
2389 Then the change that I am proposing, you will see there in red text, applies to
2390 the table heading under wetland ecosystems – the third column across. The red
2391 text there and this consequential change you will see going down to my s.6
2392 heading are to 'endeavour to set a time parameter which the assessment of the
2393 technical state of offsetting is at. By that I mean, at today's date for example,
2394 there may be no known suitable technologies for offsetting, but in three, four or
2395 five years' time that may have changed; therefore, I am trying to ensure that
2396 future plan readers can say when annexure Appendix 1A was implemented along
2397 with Policy 24A(d) at that time there was known technical offsets available for
2398 the species and ecosystems listed within Appendix 1A and Table 17. But, that

2399 was in 2024 and it is now, for example, 2029 and things have moved on. By
2400 date-stamping, if you like, the appendices that will then allow a consideration of
2401 the future state of things without requiring a plan change to continuously update
2402 Appendix 1A to reflect advancements which I expect will occur in offsetting.

2403
2404 Hopefully I have made that clear. I am obviously more than happy to take
2405 questions on that as we move to the questions part; or if it's helpful now, because
2406 I've really got this point and Appendix 1C to talk about. So is now is a good
2407 time to ask questions I am happy to receive them; or if you prefer to wait that
2408 will be fine too.

2409
2410 Chair: With 1C you're talking there about the aquatic compensation offsetting?

2411
2412 Heppelthwaite: Yes correct.

2413
2414 Chair: If you think that we can talk about those two things separately and they're not
2415 related, then happy to look at the first point you have talked about in the table.

2416
2417 Heppelthwaite: Yes they are quite separate. The aquatic offsetting is more an alignment question
2418 rather than seen to make significant change. At your leisure Ma'am.

2419
2420 Chair: Thank you Ms Heppelthwaite.

2421
2422 This is very complex. I understand the point about that things change over time
2423 and ensuring the latest information is available.

2424
2425 Is it in the explanation to Appendix 1A and also there's a definition which refers
2426 to the threat classification web page. As that gets updated those changes there
2427 become automatically incorporated, is that right?

2428
2429 Heppelthwaite: My understanding, and it may be something you wish to confirm with other
2430 council officers, and I have set this out in my primary evidence, the threat
2431 classification system is a Department of Conservation generated list, if you like
2432 [03.00.00] – slightly more complex than that of species which are under threat or not under
2433 threat.

2434
2435 Yes Mr Wyeth did propose an alteration to the introductory text, which I am just
2436 trying to locate right at this moment, which referred to ensuring that the most
2437 up-to-date list of the threat classification was used, and that was in response to
2438 the Director General of Conservation's concern. I am happy with that. I am
2439 comfortable with that, because threat classifications will change a species 'wax
2440 and wane' (for want of a better term).

2441
2442 That won't necessarily reflect the ability to offset or not offset and the
2443 technology available to offset. So, if a species or ecosystem remains in a threat
2444 classification list that's what it is. But, the ability to offset effects on that species
2445 or ecosystems might alter over time. That is my understanding of how it works.
2446 A classification might change, and regardless of whether it changes if it's on the
2447 list it's on the list. But, offsetting methods and technologies may change for those
2448 items on the list, and it's that change over time.

2449

2450 I just think back, even over the last five years there's been advancements in
2451 practices which are now considered suitable, or methodologies which are now
2452 suitable which perhaps were a little more novel say five years ago, but have
2453 shown themselves to be useful. Similarly there will be some practices which do
2454 become out of favour because they are less successful in producing the nett gain.
2455
2456 I believe they are two different things.
2457
2458 I will just provide you with where my statement covered that, because that was
2459 something I did address in my primary evidence.
2460
2461 Chair: I think para 6.17 if that helps.
2462
2463 Heppelthwaite: Thank you. That is really helpful. Yes, that's correct, 6.17 in my primary
2464 statement thank you.
2465
2466 Chair: I'm just pausing because when I read your evidence and in your attachment A
2467 you have suggested deleting that third column over. The relief that you're now
2468 seeking is an ability to recognise these updates in knowledge and awareness of
2469 what could become more appropriate for compensation and offsetting.
2470
2471 Heppelthwaite: Yes that's correct.
2472
2473 Chair: I understand the principle behind that. I might ask you to just explain to me again
2474 how having the date. So if there is an advancement in knowledge that would
2475 require – and you're talking about a specific invertebrate species for example.
2476 So, there's some new information that comes to light about that. If there is any
2477 change in that third column, so something maybe is now seen as more
2478 appropriate for offsetting or compensation, that would require a plan change and
2479 then that plan change would have a date. Could you just talk through how that
2480 process would work?
2481
2482 Heppelthwaite: Of course.
2483
2484 As the table headings are proposed and structure is proposed in Ms Guest and
2485 Mr Wyeth's evidence, the heading says, "No appropriate site knowledge,
2486 methods or expertise or mechanisms."
2487 [03.05.00]
2488 That is a very definitive statement. That is quite clearly backed up with footnote
2489 4, which I have introduced to make that very explicit. That footnote 4 says, "This
2490 column shows situations where it is not feasible to offset for residual effects,"
2491 because there's no appropriate site knowledge etc. etc.
2492
2493 It is very clear that if you fall in that list on the column, Policy 24A(d), there is
2494 no offsetting available.
2495
2496 That is the current state of knowledge as at today, for example, because that's
2497 where Mr Wyeth has produced the outcome.
2498
2499 In five years' time that may have changed. It may not have. It may still be the
2500 same, but it may have changed. So I was looking for a method which would say
2501 at the time this was written this statement that there is no method offsetting

2502 available is correct; but in the future we need to retain enough flexibility so that
2503 if there are changes there is methods to consider those.

2504
2505 My comment about a plan change was, if you leave it as it is, it would always
2506 say “no offsetting” full stop, until there is a plan change to reflect a new method
2507 for invertebrate offsetting which is acceptable to parties – which for something
2508 comparatively minor in a scheme of plan formulation, I could not see it being a
2509 high priority for any council to put forward to make a plan change, just to reflect
2510 a change in offsetting; when offsetting itself is fairly site specific and [03.06.49]
2511 for debate.

2512
2513 I heard earlier, and sorry I can’t remember whether it was Transpower or
2514 Meridian’s planning witness refer to a 2008 or 2010 document, which still isn’t
2515 reflected in plan changes. Again, it’s not a criticism of particularly any council,
2516 it’s just the reality of the time and expense needed to make plan changes.

2517
2518 If 24A(d) the column stays as is, it will always say “no offsetting” full-stop.

2519
2520 The purpose of my changes is to say, at this time this is written there is no
2521 offsetting and the time it’s written is date of operative plan. But, in the future,
2522 that might change and the way I tried to reflect that is by modifying footnote 4,
2523 particularly the last three lines of the red text which is about halfway down my
2524 page-5 that the column shows... it’s not feasible at this date. Then it goes on
2525 further and I proposed additional text. It says, “Future advances in knowledge,
2526 methods, expertise or mechanisms will occur over time and these will be
2527 assessed on a case by case basis.”

2528
2529 So it’s just really leaving or endeavouring to leave the door open. Today it’s not
2530 an option, but in the future it might be, but it will need quite careful assessment.

2531
2532 Did that help Madam Chair?

2533
2534 Chair: Yes, that’s really helpful thank you. It needs careful assessment – so wouldn’t it
2535 still need a change that’s notified and goes through a process for Table 17? Or,
2536 are you saying you can open it up to say a 104 consenting process, even if Table
2537 17 says “No you can’t offset residual.”

2538
2539 Heppelthwaite: I was looking to ensure that Table 17 was tempered by saying at the date the
2540 plan is written you can’t offset. But by modifying footnote 4, acknowledging
2541 that there could be change. That’s also the purpose of my change to the actual
2542 Policy 24D which in on page-4, paragraph 4.4, which says: “When considering
2543 whether the feasibility of biodiversity offsetting or aquatic offsetting is
2544 inappropriate recognised changes in knowledge, methods, expertise or
2545 mechanisms will occur over time and allow for these changes.”

2546 [03.10.00]
2547 Just going back to paragraph 4.4 in my supplementary statement, I think I have
2548 understood where Mr Wyeth is going, in that he said “Yes there might be some
2549 changes to technology.” Again, that may be something you wish to confirm that
2550 I have correctly understood from his statement which I have reflected in my
2551 paragraph 4.2. But, in my view I didn’t think the wording he had proposed for
2552 24A(d) was as clear about his outcomes as I would like to see it. I didn’t think it

2553 really said things might change and we need to consider those in the future. I
2554 didn't think his wording proposed to cover that.

2555
2556 If you like, I have endeavoured to have a cascade from saying in Policy 24A(d)
2557 that things might change in the future, and the second part of my wording reflects
2558 that bearing in mind what the NPS says that some species might not be
2559 appropriate. So I'm mindful that there's quite a limited range. It's a small gap is
2560 what I'm trying to get through.

2561
2562 S.24D says there might be change in the future and because 24A(d) relates
2563 directly to Appendix 1A then there needs to be in my view consequential
2564 changes to 1A, and a footnote to allow flexibility so that you're not perpetually
2565 stuck on the wording of Table 17A that says "no appropriate signs of known".

2566
2567 Chair: Thank you, but doesn't your approach that you're suggesting... isn't it saying
2568 then that actually there are no limits to offsetting, and you can always have a
2569 case by case assessment.

2570
2571 I'm just not sure if that Appendix 3 in the NPS-IB, so the principles for offsetting
2572 allow for that. Doesn't the NPS-IB say, "There are definitely times when
2573 offsetting of residual adverse effects on indigenous biodiversity is not
2574 appropriate." So here, the Council informed by the evidence of Dr Crisp in
2575 particular I think, maybe Dr Maseyk as well, has said that these are the species,
2576 ecosystems and habitats where it's not offsetting, or residual adverse effects is
2577 not appropriate; but isn't your approach saying, "But, actually we still need a
2578 case by case assessment and in a particular situation it might be okay to offset."

2579
2580 Doesn't that sort of undermine what the NPS-IB is trying to achieve?

2581
2582 Heppelthwaite: There's a few things there which I think confine the approach that I am
2583 proposing. The first one, and the draft wording I've got for Policy 24D, the last
2584 sentence there which says, "reflects offsetting is likely to be limited," or may be
2585 limited, where referring to the ecosystems listed in 1A. So that acknowledges
2586 the wording in Mr Wyeth's proposal which is pretty similar and says that it may
2587 not be appropriate.

2588
2589 I am mindful that the NPS-IB when it refers to "not appropriate" does give
2590 some specifics on that. The things given are examples. It doesn't say, "make
2591 these a prohibited activity".

2592
2593 I'm just looking at Appendix 3 in the NPS-IB, sub-clause 2, and that specifically
2594 refers to where biodiversity offsetting is not appropriate. That's the gold text at
2595 the start of clause 2. It says after that, "biodiversity offsets are not appropriate in
2596 situations where indigenous biodiversity values cannot be offset to achieve a net
2597 gain." So unless you can achieve a net gain it's not feasible.

2598 [03.15.05]

2599 Then it goes on to say examples of an offset not being appropriate would include
2600 where and then it has a list of things, (a), (b) and (c) – [03.15.16] residue effects
2601 cannot be offset because of irreplaceability," and dah-dah-dah.

2602
2603 That's an example. The wording is prefaced with 'example'. It's not prefaced
2604 with 'you will not do it in this location'.

2605
2606 It is a very fine point, but I would respectfully suggest that had the drafter said,
2607 ‘never offset’ and I can say (a), (b) and (c) they would have been a bit stronger
2608 in their drafting around those, and not put them in a position where I preface
2609 with the word of ‘example’.

2610
2611 I completely acknowledge this is an extremely carefully worded item. It's quite
2612 strongly worded. It's not often I have seen examples of things you should do in
2613 this type of document. It's not unheard of but it's quite a clear pointer if you like
2614 that is not a mandatory directive that says, “You will not do this.” I think there’s
2615 a really subtle difference there. I think the bar for allowing a type of offset which
2616 isn’t currently known, or is put forward in the future will be very high. The level
2617 of proof and demonstration that this new and innovative technology will work
2618 and will be very high, particularly when you’re dealing with the option in TX3
2619 [03.16.44] to (a) which is the residual effects cannot be offset because of
2620 irreplaceability or vulnerability in the species. I think that’s a really high test
2621 when you’re dealing with those particularly fragile species or ecosystems.

2622
2623 On a whole, when I look at how this would be implemented in the effects
2624 mitigation hierarchy, the circumstances where I would see Policy 24A(d) as I
2625 proposed in consequential amendments coming into play is not huge. We are
2626 talking about a big door with a very small gap in it, and a very high test, because
2627 any offsetting proposed obviously will need to satisfy the principles, which are
2628 set out in Appendix 3 and proposed to be replicated.

2629
2630 Whilst they say examples, and as I said they are quite a clear pointer, they are
2631 not prohibitive. I am really mindful that even ten years ago things like
2632 biodiversity offsetting and a biodiversity offsetting accounting model is for still
2633 relatively new territory. Five years ago we were still looking at ratios of
2634 offsetting one square metre of wetland and we’ll replace it with six. So things
2635 are advancing in this field quite quickly, and with the introduction of the NSP-
2636 IB (and this is only my prediction) but I think we’ll see continued advancement
2637 as we come to terms as a society with implementing this, and ecology
2638 particularly as a profession. Things will advance pretty rapidly in terms of how
2639 one demonstrates no nett loss and how that is brought forward in terms of
2640 achieving the outcomes of the NPS-IB and more specifically in this case the
2641 RPS.

2642
2643 Chair: Thank you very much. I understand that point better now. Thank you.
2644
2645 I know we’ve got still got aquatic compensation to also talk about, but I will just
2646 see if anyone has any other questions on the Table 17 point.

2647
2648 Kara-France: No thank you.

2649
2650 Chair: If you would like to address us on the aquatic compensation.

2651
2652 Heppelthwaite: Thank you. I am referring now to s.5 about partway down page-5 of my
2653 supplementary statement. I note that there’s a difference between offsetting for
2654 aquatic environments as proposed in Plan Change 1, Appendix 1C relevant to
2655 the NPS Freshwater Appendix 6(2).

2656

2657 For ease of reference I have replicated in paragraph 5.1 what Appendix 1C says,
2658 and I have added some bold text. I have added some bold text.

2659
2660 Then in paragraph 5.2 I have replicated what Appendix 6(2) of the NPS says,
2661 and again I have indicated gold text to highlight the specific areas I have some
2662 interest in.

2663
2664 In short, Appendix 1C in Change 1 requires a net gain for aquatic offsets, which
2665 [03.20.00] is a higher requirement in the NPS Appendix 6, which requires no net loss and
2666 preferably a net gain in relation to natural inland, wetlands and river extent of
2667 values.

2668
2669 I consider an amendment to 1C is required to align the outcomes of the NPS-
2670 Freshwater for aquatic offsetting in relation to natural inland, wetlands and river
2671 extent of values. That's the terminology from the NPS.

2672
2673 I have proposed there in italicised (2) and (c) those changes, which effectively
2674 say what Appendix 6(2) of the NPS requires, which is no net loss for aquatic
2675 offsets for natural inland, wetlands and river extent of values.

2676
2677 And, I have left Mr Wyeth's version of a net gain, because I agree that's correct
2678 for all other indigenous biodiversity values. The only reason I have added for all
2679 other indigenous biodiversity values is to make it really clear that in my view
2680 aquatics for natural wetlands and rivers have a different statutory requirement
2681 than the remainder of biodiversity, which is covered under the NPS-IB.

2682
2683 I have made a parallel suggestion in sub-clause (c). Again just to be clear, that's
2684 of Appendix 1C in Plan Change 1.

2685
2686 That largely concludes what I wish to present today. My conclusion there in s.6
2687 just confirms the items that I am comfortable with, from (a) to (e) in paragraph
2688 6, and then just summarises which we have just talked about obviously Policy
2689 A and associated appendices, and my view on Appendix 1C.

2690
2691 Any questions I am happy to take at this point.

2692
2693 Chair: Thank you.

2694
2695 You've explained it in a different way, but this is also a point, I don't know if
2696 you heard Ms Cook for Wellington City Council also talking about aquatic
2697 offsetting and a concern of trying to combine the principles for both in this way.
2698 I won't be giving her evidence proper justice, but basically there are concerns.
2699 One is much broader than the other. When you try to combine them you come
2700 into these unintentional consequences. You've really clearly pointed that out,
2701 the differences between net gain and no net loss.

2702
2703 There is that statement though, preferably a net gain. It could be that the officer
2704 is saying in this context that is what I think is appropriate.

2705
2706 Is there any limitation in the NPS's on being more restrictive? Sorry, I'm not
2707 wording that well. You have pointed out that difference – achieving a net gain
2708 versus achieving no net loss and preferably a net gain between biodiversity

2709 offsetting and aquatic offsetting. I am just wondering if there is anything that
2710 actually prevents proposed Change 1 using that same language for both.
2711

2712 Heppelthwaite: If I have understood correctly Ma'am, I think what you're asking is could
2713 Wellington Regional set a higher bar than the NPS Freshwater.
2714

2715 Chair: Yes, that's right.
2716

2717 Heppelthwaite: No, there's nothing which prevents that, that I can see. In my view the NPS has
2718 [03.25.00] set a minimum if you like. I have approached this from a principles perspective
2719 of that is what the NPS requires. I prefer to see consistency [03.25.10] those
2720 documents across, when it gets down to the detail of specifying net loss and net
2721 gain.
2722

2723 One thing which I am sure you have all seen, which I found very helpful was Dr
2724 Maseyk's evidence which had a very helpful diagram in it, in Ms Maseyk's
2725 rebuttal evidence. I'm sorry, I've probably incorrectly pronounced her name. It
2726 was her primary evidence. It had a helpful diagram of the scale of net loss
2727 through to net gain. I'm speaking with a [03.25.53] based on my experience, that
2728 is quite often a very fine line between being a net loss, being zero and then being
2729 a net gain. I thought her diagram actually illustrated that really well.
2730

2731 The practical difference might not be much, or it might be quite a bit depending
2732 on the scale of the project. I think it's important to have that consistency back
2733 through, and that line of sight back through to the requiring documents.
2734

2735 But, to answer your question, there is nothing to prevent Wellington Region
2736 going for a higher outcome if that's what it thinks it can support and justify, and
2737 that's what its community is looking for.
2738

2739 Chair: Have you identified any problems – we have the aquatic offsetting compensation
2740 principles from the NPS-FM also incorporated through the Freshwater
2741 provisions, the new policy 18A and B I think that Ms Pascal... sorry, you don't
2742 need to find them, but I guess they are incorporated through the freshwater
2743 provisions and they are now being incorporated in the indigenous biodiversity
2744 provisions, as they apply to indigenous biodiversity.
2745

2746 I guess if you're dealing with ecological issues you'd be looking at these
2747 provisions. I am just wondering if there's potential for confusion. If you're doing
2748 an activity that say affects a river, it might lead to some loss of extent and it
2749 might also potentially affect biodiversity. From a practical point, maybe there's
2750 no problem with referring to the principles from both the NPS-FM and the NPS-
2751 IB. I guess not because they're currently in those National Policy Statements
2752 aren't they, as separate appendices.
2753

2754 There shouldn't be an overlap or any sort of confusion between how they each
2755 operate.
2756

2757 I don't know if you've got any practical experience with that.
2758

2759 Heppelthwaite: Probably no, I don't really have anything further to offer in that regard.
2760

2761 Chair: That's okay. Did anyone have any questions?
2762
2763 Kara-France: No thank you Madam Chair. Thank you for your presentation.
2764
2765 Chair: Thank you. You've really taken us to the key points and explained them very
2766 clearly. I don't think we have any further questions.
2767
2768 Heppelthwaite: Thank you for your time. We appreciate your questions and the ability to speak.
2769
2770 Chair: Thanks very much for joining us. Ka kite.
2771
2772 Heppelthwaite: Ka kite.
2773
2774 **Department of Conservation**
2775
2776 Chair: Have we got the Director General of Conservation, Mr Brass?
2777 [03.30.00]
2778 Aroha mai Ms Anton, sorry to keep you waiting. Can you hear us okay?
2779
2780 Anton: Yes thank you.
2781
2782 Chair: Welcome again, to Hearing Stream 6, Indigenous Ecosystems. Is Mr Brass with
2783 you as well?
2784
2785 Anton: Yes, I can see him on the call.
2786
2787 Chair: We might just check that the sound is working Mr Brass, can you hear us?
2788
2789 Brass: Kia ora koutou.
2790
2791 Chair: Kia ora. Hi. Welcome. You have both presented before, would you like us to go
2792 through any introductions? Are you happy that you know who we all are?
2793
2794 Anton: We're happy thank you Madam Chair.
2795 Chair: We have read your legal submissions. Thank you for those. We have also read
2796 Mr Brass' planning evidence. I'm not missing any speaking notes. Those are the
2797 two documents.
2798
2799 Anton: Mr Brass filed some speaking notes on Monday, but there are no further legal
2800 speaking notes.
2801
2802 Chair: Thank you. I think we've got everything we need. Over to you. If you are able
2803 to in particular take us to the points where you are seeking relief that the
2804 reporting officers currently don't support in their rebuttal that would be great.
2805 Over to you how you would like to present. Thank you.
2806
2807 Anton: Thank you. Kia ora tatou. I will kick off by just talking to four things that we
2808 have observed come up during the hearing so far this week. We haven't been
2809 able to see all of it, but we have seen quite a lot. Then I will hand over to Mr
2810 Brass to go through his speaking notes.
2811

2812 The first theme for me that I have noticed has been issues of scope, around
2813 implementing the NPS-IB which was gazetted after the RPS plan change was
2814 notified. I would just like to reiterate (and it's nothing new) that my legal view
2815 aligns with the view of Greater Wellington's lawyers, where they said there is
2816 broad scope to implement the indigenous biodiversity provisions through this
2817 plan change. I do acknowledge the concerns of other submitters in relation to
2818 the level of detail that has been brought about through the rebuttal evidence, but
2819 legally as a matter of law my view is that scope remains to introduce those
2820 provisions.

2821
2822 The second theme is around the issue of biodiversity offsetting and
2823 compensation in the coastal environment – so in particular, Policy 24A.
2824 Certainly for what we call NZCPS Policy 11A adverse effects that need be
2825 avoided, then it is inappropriate to have offsetting and compensation on those
2826 matters.

2827
2828 However, for Policy 11B, the Tier 2 values if you like, where the requirement is
2829 to avoid, remedy or mitigate other adverse effects, then we are of the view that
2830 doesn't necessarily preclude offsetting or compensation, and that offsetting and
2831 compensation in fact could result in better outcomes as a result of activities.

2832
2833 Also, if there is to be offsetting and compensation in those areas then it's
2834 appropriate to use the principles that are outlined in Appendix A.

2835
2836 To reiterate, no offsetting and compensation of Policy 11A values or for
2837 anything that needs to be avoided; but Policy 11B does have a policy direction
2838 to avoid, remedy and mitigate some types of adverse effects, and in that case it
2839 is possible that there could be offsetting or compensation relevant.

2840 [03.35.00]

2841
2842 That is I guess a point that's been addressed by Forest & Bird. We just wanted
2843 to put our view there of it.

2844 Also in relation to offsetting in the coastal environment, Ms Foster this morning
2845 drew attention to Policy 39 of the proposed Natural Resources Plan, which
2846 softens, if you like, the avoid requirement for regionally significant
2847 infrastructure in the coastal environment. However, I do just want to point out
2848 that that policy relates to existing regionally significant infrastructure.

2849
2850 It does relate to operation, maintenance, upgrade and extension, but it is actually
2851 quite nuanced in the way that it's written; so it's not just as simple as saying that
2852 Policy 30 enables offsetting and compensation for infrastructure in a coastal
2853 environment.

2854
2855 The third theme that I wanted to refer to is the interplay between Policy 24D for
2856 renewable energy and electricity transmission activities in the coastal
2857 environment.

2858
2859 We consider that on its own Policy 24D is an uncomfortable fit for implementing
2860 the New Zealand Coastal Policy Statement. It obviously have an effects
2861 management hierarchy and my understanding is it's based on the consultation
2862 document for renewable energy and electricity transmission.

2863

2864 However, we also understand Mr Wyeth's [03.36.26] and this is how we read it
2865 as well, that Policy 24D does not apply on its own. It applies alongside Policy
2866 24C. Policy 24C in our view a robust implementation of New Zealand Coastal
2867 Policy Statement.

2868
2869 We consider that those two policies will need to be read together in consenting
2870 decisions, and also when its given effect to in district plans and regional plans.

2871
2872 We think that in the current situation, where we are waiting for further national
2873 policy, for renewables in electricity transmission, that is probably the best of the
2874 situation, that the Regional Policy Statement can do at the moment.

2875
2876 We acknowledge that it's not yet reconciling Policy 24D and Policy 24C, but
2877 that putting them both and reading them together is as good a holding position I
2878 think as can be had for the Regional Policy Statement pending further national
2879 policy on renewables and transmission.

2880
2881 We listened to Transpower this morning and one aspect that caused some area
2882 of disagreement is saying that Policy 24C trumps 24D – so saying that the New
2883 Zealand Coastal Policy Statement trumps the REG and ET policy. As I have just
2884 said, our interpretation is we don't think that is the case. We don't like the
2885 language of trumping since the *King Salmon* case and the further *Port Otago*
2886 case. The direction is to read these things together and reconcile them in as far
2887 as possible. When there is conflict, that's when you need to go through the
2888 structured analysis.

2889
2890 That's what I would like to say on Policy 24D and the interaction with 24C.

2891
2892 The last theme is Policy IE.2A in relation to managing indigenous biodiversity
2893 outside SNAs.

2894
2895 The Director-General supports that policy. A further aspect on scope for that is
2896 the Plan Change 1 webpage says: "Strengthening the existing provision for
2897 indigenous ecosystems, to maintain and restore ecosystem processes and
2898 biodiversity generally, and not just significant biodiversity." In our view that's
2899 an important aspect of the Council's functions under s.31(g)(a), in that it's
2900 needed to protect areas where species move up and down the threat classification
2901 list, where regeneration occurs to a point where indigenous biodiversity becomes
2902 significant – as I heard the Wellington City Council representative say this
2903 morning. To acknowledge that sometimes areas are missed in an SNA
2904 assessment, but also to support a District Plan's indigenous vegetation clearance
2905 rules.

2906
2907 From the Director-General's perspective we find those incredible important.
2908 Indigenous vegetation clearance rules outside SNAs are always a bit obviously
2909 more lenient than inside SNAs, but they're a very important part in the tool kit
2910 to help maintain indigenous biodiversity, or in common [03.39.39] help the
2911 decline. So we think that's necessary for the Regional Council to have this sort
2912 of policy in the RPS Plan Change in order to implement its functions.

2913
2914 That's it from me. I'm happy to either take questions or hand over to Murray
2915 and questions at the end.

2916 [03.40.00]

2917 Chair: Thanks very much. Happy to hear from Mr Brass and then we can have our
2918 questions for both of you at the end. Thank you.

2919
2920 Brass: Tēnā koutou. I don't have a lot to say. I did provide some speaking notes.
2921 Probably just two points to note there, in regards to 16 and 16A. Ms Guest has,
2922 I think the word used was 'grudgingly' accepted adding the words 'where
2923 appropriate'.

2924
2925 I share her concern that just on their own all those words do is leave plan users
2926 uncertain as to how to [03.40.45] that – words that in my view are best used
2927 where you've got somewhere you can then go to, to say, "How do we work out
2928 what is appropriate?"

2929
2930 I note that Policy IE.3 is of some assistance, but it sets out a process to be
2931 followed. Once that process has been followed there should be much more
2932 clarity. I'm just suggesting that once that process under IE.3 has been followed,
2933 the words 'where appropriate' should probably be replaced by some kind of a
2934 reference through to what comes out of that process and is a lot more specific.

2935
2936 Just in terms of the carve-out for REG and ET, and this is just my paragraphs 10
2937 and 11, in the speaking notes, in reading my point there, is that that carve-out
2938 just means that the NPS-IB does not apply. I would note that there wasn't an
2939 NPS-IB in force at the time that these provisions were prepared. So having an
2940 NPS-IB not applying is not actually something new. It in my view does create,
2941 if you like, a bar to imposing provisions that are solely based on giving effect to
2942 the NPS-IB. But where you have got provisions, as in this case, that have been
2943 developed in the absence of that, on the basis of wider provision of the Act, of
2944 the evidence that's been presented on the state of biodiversity and those powers
2945 and functions under 30 and 31, as far as I am concerned there is no bar to being
2946 able to address indigenous biodiversity activities for REG and ET. The question
2947 then is that that has to be dealt with on its merits, as opposed to just automatically
2948 flowing from an NPS.

2949
2950 Probably just related, the only thing from my primary evidence, I would just
2951 reflect on as it's come up a bit in the hearing, and this is specifically for Policy
2952 IE.2A and managing indigenous biodiversity outside SNAs, my clear
2953 understanding from the Act and the NPS-IB are constructed, is that you can still
2954 have effects within SNAs.

2955
2956 Protecting SNAs cannot in itself be relied on to meet the function of maintaining
2957 indigenous biodiversity; so to me, just the way things are structured you have to
2958 be able to manage indigenous biodiversity outside SNAs as well as inside SNAs
2959 if that overall function of maintaining at a district or regional level is to be
2960 achievable.

2961
2962 That's really just my key points. With that, I'm also happy to take any questions.

2963
2964 Chair: Kia ora. Thank you. Just on that last point Mr Brass, some submitters, including
2965 Meridian earlier today, suggested that the Panel has to look very carefully at
2966 scope of Policy IE.2A, and whether there is scope because this is a policy that's
2967 come in through the Officer's evidence. It wasn't in the notified PC1.

2968
2969 Are you aware of any submission point in the Director-General's submission
2970 that sought a policy for maintaining biodiversity outside SNAs?
2971
2972 Brass; There were a number of submission points there relating to aligning with NPS-
2973 IB when gazetted, so it would flow from that.
2974 [03.45.00]
2975 But, I'd sort of see scope as probably more of a legal question. So other than
2976 noting that, I wouldn't go any further in terms of making a call as to whether a
2977 scope or not.
2978
2979 Chair: Thank you. I don't know if suggesting it's a legal question is passing that to Ms
2980 Anton, if you have any comment. If not that's okay, it's something that we'll
2981 work through anyway. I just wondered. A few people have questioned that there
2982 is no scope, and I just wondered if there might be something in your submission
2983 that you could point to about that.
2984
2985 Anton: Madam Chair, just having a look at our submission I can confirm it's as Mr Brass
2986 thought, which is supporting Policy 24 as being generally appropriate, but if the
2987 NPS is gazetted prior then they should be reviewed for compliance with that
2988 document.
2989
2990 I think Greater Wellington's lawyers went through the S.32 Report and
2991 identified aspects that should be putting submitters on notice for that. What
2992 really was compelling for me was the front page of the webpage, which
2993 specifically spoke about protecting indigenous biodiversity outside of SNAs.
2994 That just suggests to me that that has from the outset been within the four corners
2995 of the plan change.
2996
2997 Chair: Thanks very much.
2998
2999 Ms Anton, the points you made about I think Policy 39 in the NRP, and I know
3000 we are not looking at that here, but we did hear quite a bit about those provisions
3001 in the NRP this morning. I hadn't quite appreciated, and did I capture that right,
3002 you said that it relates to 'existing infrastructure only'?
3003
3004 Anton: Yes that's correct. It's existing regionally significant infrastructure, and also
3005 renewable energy – my bad if I missed that out. I think the critical point is, it
3006 doesn't apply to new development thereof.
3007
3008 It is a nuance provision. Like you say, we are not here to examine this in
3009 particular. I understand perhaps that the question is whether the ship has sailed
3010 on a softening of the NZCPS for infrastructure and renewable energy. But, it's a
3011 consideration policy. It basically says, "If you are renewable energy or
3012 regionally significant infrastructure, and you have a functional and operational
3013 requirement, and there's no practical alternative, it doesn't excuse these
3014 activities from Policy 38 which implements the NZCPS, but it adds in additional
3015 consideration about whether or not the activity provides for the maintenance, or
3016 where practicable enhancement or restoration of affected indigenous
3017 biodiversity values.
3018

3019 It's an acknowledgement I think of the place of existing development within
3020 significant sites; an acknowledgement of the fact that in order to maintain
3021 operational capacity etc. there are fewer adverse effects in being able to continue
3022 those sites rather than develop new sites and significant areas.
3023

3024 Wratt: Could I just explore that a little bit more? What would you see as the practical
3025 application of that? I guess one of the situations that Transpower is concerned
3026 about is their ability to trim trees that are encroaching on their power lines and
3027 have potential to impact on the supply. So what should be their process under
3028 that, when they need to do that – when they need the maintenance to trim trees?
3029

3030 Anton: Stepping back a little bit, I see this as impacting on the rules. The rules in the
3031 plan will be needing to implement this policy, as well as the avoid policies. I
3032 think this gives the potential (and this is normally the way to be frank) for more
3033 lenient rules for operation, maintenance and upgrade – even in significant sites.
3034 [03.50.00]

3035 I guess this policy, if it were restricted discretionary activity, it would add
3036 criteria for enhancement and restoration. It just adds those considerations, but
3037 acknowledges that while it might be appropriate to for example have a restricted
3038 discretionary activity rule for upgrader or extension for existing regionally
3039 significant infrastructure but it may not be appropriate to have a restricted
3040 discretionally rule for new development. That sort of rule would be more
3041 stringent. That's how I see the practical application of it. In my experience
3042 typically rules for maintenance and operation are enabling and then as it gets up
3043 to upgrade and extension, a little bit more stringency, and then new development
3044 more stringency again.
3045

3046 Wratt: So what process do they need to go through now to do that maintenance work?
3047

3048 Anton: Sorry, I haven't looked at the rules for the Regional Plan there, but I certainly
3049 did hear Ms Whitney this morning and I concurred with her when she was saying
3050 the PNRP has just been mediated and agreed by all parties. That is true - without
3051 any hearings for the Environment Court.
3052

3053 Transpower are happy and we are happy as far as that level of compromise goes
3054 with the rule outcome and the Regional Plan.
3055

3056 Wratt: Thank you. That probably wasn't a fair question to ask you. Thank you.
3057

3058 Chair: Ms Anton, we've heard that there are various options for addressing electricity
3059 transmission and renewable generation. There is clause 1.3 of the NPS-IB has
3060 an exemption. One option is that the RPS is silent in these biodiversity
3061 provisions. When the two need to come together one of them needs to do work
3062 and it affects indigenous biodiversity that will get reconciled at that consenting
3063 stage, or NOR stage; so basically not having the RSP explicitly deal with it.
3064

3065 Another option, which is what Mr Wyeth is currently supporting, that's taking
3066 the draft NPSs and trying to plug that policy using the language in those draft
3067 NPSs.
3068

3069 We have heard Transpower say that's problematic and they've got concerns and
3070 they don't support that approach. We've had Meridian say, "Actually that works,
3071 it needs some changes but broadly that will work."

3072
3073 In the coastal environment, which is obviously bringing in Policy 11 of the
3074 NZCPS, in that environment the reconciliation of these issues could occur in the
3075 RPS and that's what I understand these provisions are trying to do, these rebuttal
3076 provisions.

3077
3078 [03.55.00] If that didn't happen, I guess we've got the status quo really isn't it, of
3079 reconciling any tension that occurs. The district plan might try to do it. If there's
3080 a change to the NRP they might try to do it, otherwise it's left for a consenting
3081 or notice of requirement.

3082
3083 There's problems with all of those options. My understanding of the Supreme
3084 Court's decision in *Port Otago* is that it was saying a regional policy statement
3085 is an appropriate place to address competing tensions.

3086
3087 Is the Director-General of Conservation reasonably comfortable with Mr
3088 Wyeth's attempt at reconciliation? I think I'm particularly interested in the
3089 coastal environment.

3090
3091 Anton: Thank you Madam Chair. Certainly I would like to hand over to Mr Brass after
3092 my attempt at this.

3093
3094 In terms of Policy 24D and if it was in the coastal environment, probably
3095 reasonably comfortable, so long as Policy 24D is read together with 24C.

3096
3097 I acknowledge that things are different, depending on whether you're talking
3098 about electricity transmission activities or renewable energy generation. Things
3099 are different because of the different level of directedness, if you like, between
3100 the NPS-ET and the existing NPS-REG and acknowledging that there is likely
3101 to be change in both those NPS's coming up.

3102
3103 We are reasonably comfortable with 24D in the coastal environment at the
3104 moment. There are some levels of discomfort but they are [03.57.20] by the fact
3105 that it has to be read together with Policy 24C.

3106
3107 An example of the level of discomfort is Policy 24D once you go through the
3108 hierarchy then you need to avoid it if the residual adverse effects are significant.
3109 But, if they are not significant the activities must be enabled if the national
3110 significant and benefits of activities outweigh the residual adverse effects. So
3111 that's strong that you must enable something.

3112
3113 Also there's accounting issues with outweighing and that sort of thing. I guess
3114 that's kind of like the concerns that other submitters had – that there's a lot in
3115 this Policy 24D that people have had an opportunity to talk about at the hearing,
3116 but not through submissions.

3117
3118 The context is, as I opened I said, we'd be pretty uncomfortable with 24D on its
3119 own if 24C also did not apply.

3120

3121 So that is where we are at. We acknowledge that's a bit untidy. I think the
3122 untidiness is no-one's fault other than the fact that there's pending national
3123 direction and a bit of a state of uncertainty.
3124
3125 I think if that answers your question from a legal perspective Madam Chair, I
3126 will just ask Mr Brass if he wants to add anything from a planning perspective.
3127
3128 Brass: Probably just a couple of points. One is that I have looked at those provisions in
3129 the actual resources plan and gone, "Would this 24C and D read together? Does
3130 that unwind how that would work?" I'm basically comfortable that you could
3131 read those NRP provisions as having dealt with both of those policies.
3132
3133 From that point of view I am comfortable and also I think tempered a bit by the
3134 fact that if we wait until we've got a perfectly settled and stable policy
3135 environment, we're not going to ever be able to do anything, because in my
3136 experience there's always something else in the wings.
3137
3138 So while it's not completely perfect, I think it does the job. We expect that there
3139 will be some changes coming up and that may take things in one direction or
3140 another, but as best as we can assess things right now, yes I am comfortable with
3141 where that's landed in terms of the rebuttal recommendations.
3142
3143 Chair: Thanks very much. I'm must seeing if I had any further questions. I will ask if
3144 the other Commissioners wish to ask anything?
3145
3146 Wratt: I'm good thanks.
3147
3148 Chair: I think that does also cover the questions that I had too. Thank you very much
3149 for your evidence and your legal submissions, and for presenting to us today.
3150 We really appreciate your time.
3151
3152 Anton: Thank you Madam Chair and Commissioners, we appreciate your time too.
3153 Thank you for hearing us.
3154
3155 Chair: Kia ora. Before we finish up, I would just like to acknowledge one of our hearing
3156 advisers, Ms Middendorf. Whitney is sadly leaving us today. Just wanted to say
3157 on behalf of the Panel thank you very much Whitney for all of your support so
3158 far. You have played a huge contribution in ensuring the efficient running of the
3159 hearings. Thank you very much.
3160
3161 Middendorf: Kia ora.
3162
3163 Chair: I think that we can probably close Hearing Stream 6, Indigenous Ecosystems.
3164 Thank you again very much to the Officers, Hearing Advisors, all the submitters,
3165 experts and everyone – Dr Maseyk and Dr Crisp as well. Everyone for their
3166 presentations and evidence.
3167
3168 We will be issuing a Minute shortly which set out specific questions that we
3169 would like the Reporting Officers and maybe the technical experts to come back
3170 to us on. The timing of that should be sometime next week. We'll put a
3171 timeframe as well in there for the Officer's reply.
3172

3173 That leaves us with one more hearing stream, Hearing Stream 7, which is a wrap-
3174 up and there are some other specific provisions – there’s some coastal things and
3175 some other things as well. We’ll be getting the S.42As for that topic in due
3176 course.

3177
3178 In the meantime thanks very much everyone.

3179
3180 We can close with a karakia. Thank you.

3181
3182 Guest: Thank you Commissioners.

3183
3184 *Kia tau ngā manaakitanga a te mea ngaro*

3185 *Ki runga ki tēnā, ki tēnā o tātou*

3186 *Kia mahea te hua mākihikihi*

3187 *Kia toi te kupu, toi te mana*

3188 *Toi te aroha, toi te reo Māori*

3189 *Kia tūturu kia whakamaua kia tīna*

3190 *Tīna, hui e, tāiki e*

3191

3192

3193 [End of recording 04.04.38]