

Before the Hearings Commissioners

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

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

and in the matter of Wellington Regional Policy Statement

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

Dated 17 May 2024

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

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

1.1 My Primary Statement¹ describes:

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

1.2 My summary statement² updated my opinion on recommended changes provisions. I confirm my Attachment A continues to reflect my preferred outcome relative to those provisions which it addresses.

2 SCOPE OF STATEMENT

2.0 I was unable to attend the expert caucusing as directed by Panel Minutes 22 and 23 due to date changes and an international flight on the day of (rescheduled) caucusing. I have prepared this supplementary statement to endeavour to assist the Panel in relation to Minute 22 paragraph 9(b):

...or narrow and identify any points of difference between them in order to:
a. [...], and
b. give effect to the NPS-IB, NZCPS and any other relevant higher order direction while also providing appropriately for the maintenance, upgrading and development of WIAL's and Waka Kotahi's assets and activities, and in particular, how these activities are undertaken in the coastal environment.

2.1 Specifically, I have provided further consideration of the Joint Witness Statement³ (JWS) proposed amendments to Policy 24C and a new Policy 24CC .

2.2 I understand Policy 24C(3) and (4) and 24CC4 were introduced by Mr Wyeth by reference to Operative Natural Resources Plan Policies P38 and P39. Unless otherwise noted, all RPS policy references refer to the provisions within the JWS.

¹ Dated 30 January 2024.

² Dated 22 February 2024.

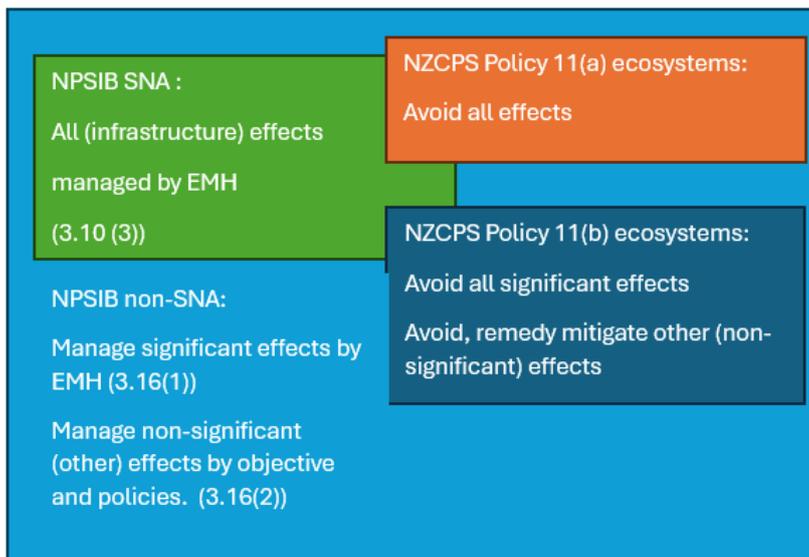
³ Joint Witness Statement of Planning Experts Indigenous Ecosystems Topic, 6 May 2024.

⁴ JWS Paragraph 45.

3 COASTAL ENVIRONMENT EFFECTS MANAGEMENT

3.0 The NZCPS has priority should there be conflict with the NPSIB⁵. Both documents have a range of effects management requirements in the coastal environment and I have illustrated my understanding of how these apply in **Figure 1**. The light blue box indicates the coastal environment, and boxes which display partially over others have higher priority, eg. orange and blue boxes partially over green box indicating priority.

Figure 1: NZCPS/NPSIB Effects management



*EMH = effects management hierarchy as defined in NPSIB.

4 POLICY 24C

4.0 Policy 24C proposes, for the coastal environment, that district and regional plans include provisions that manage effects by:

- a. Policy 24C(1) avoiding adverse effects on ecosystems listed in Policy 24C(1). This policy effectively reflects the NZCPS Policy 11(a) 'avoid' approach and the ecosystems listed (orange box, Figure 1).
- b. Policy 24C(2) avoiding significant adverse effects on ecosystems listed in Policy 24C(2). This policy reflects the NZCPS Policy 11(b) 'avoid significant effects' approach and (almost identical) listed ecosystems (dark blue box, Figure 1).

⁵ NPSIB 14(2).

- c. Policy 24C(3) managing non-significant adverse effects on ecosystems in Policy 24C(2) by applying an effects management hierarchy. By its cross reference to Policy 24C(2), this policy appears to reflect the avoid, remedy or mitigate other adverse effects of activities aspect of NZCPS Policy 11(b) (policy applies to dark blue box, Figure 1).
- d. Policy 24C(4) managing significant adverse effects not dealt with in Policy 24C(1) and (2) (ie. outside of NZCPS Policy 11 ecosystems) by applying an effects management hierarchy(reflected by the green and light blue box).

Policy 24C(3)

- 4.1 Policy 24C(3) effectively requires that an effects management hierarchy approach, **(EMH)** similar to the defined NPSIB effects management hierarchy, is applied to non-significant other effects on ecosystems listed in RPS Policy 24C(2) (effectively ecosystems identified in NZCPS Policy 11(b)).
- 4.2 The Policy 24C(3) EMH is more restrictive and directive than the NPSIB EMH because the Policy 243(C) approach:
 - a. Applies to all residual effects, the equivalent NPSIB EMH applies to more than minor residual effects (clause (d));
 - b. Provides that where offsetting of all residual effects is not available, then the activity is avoided; except for regionally significant infrastructure where residual effects can be compensated for. The NPSIB EMP provides for offsetting where more than minor residual adverse effects (clause (e)); and
 - c. Directs that compensation is provided in accordance RPS Appendix 1D (or avoided outright if this cannot occur). The NPSIB EMP does not directly specify how compensation is provided (noting however that NPSIB Appendix 4 provides *Principles*) (clause (f)).
- 4.3 In my opinion, Policy 24C(3) does not appropriately apply the NZCPS or balance with NPSIB because:
 - a. The NZCPS requires non-significant (other) effects on 11(b) ecosystems to be avoided, remedied or mitigated (refer dark blue box, Figure 1). Policy 24C(3) goes beyond this and requires that an EMH (more restrictive and directive than the NPSIB EMH) is applied to non-significant effects.

b. This approach is also inconsistent with the NPSIB as it requires a stricter approach to managing effects than would otherwise be required (acknowledging the priority of the NZCPS). In particular; it requires effects on non-significant effects on non-SNA areas (light blue box, **Figure 1**) to be managed to give effect to the NPSIB objective and policies⁶ (not by the NPSIB EMH and noting the NZCPS prevails in the event of a conflict⁷).

4.4 In this regard, I do not support Policy 24C(3). In my opinion, it should be amended to remove the EMH and reflect the 'avoid remedy mitigate' approach for Policy 11(b) areas (dark blue box).

5 POLICY 24CC

5.0 Policy 24CC, via the cross ref to Policy 24C(1) and (2), applies only to NZCPS Policy 11(a) and (b) locations. It is proposed to be read with Policy 24C and relates specifically to existing infrastructure.

5.1 NPSIB 3.15 addresses established activities (including infrastructure) within SNAs so is appropriate to consider for areas within the coastal environment and SNAs but outside NZCPS Policy 11 areas.

5.2 In my view, specific policy direction for established infrastructure outside NZCPS Policy 11 areas and inside SNAs should be provided as this is not covered in Policy 24CC (or Policy 24C).. In particular, this should include:

- a. A directive requirement for local authorities to enable⁸ established activities (including maintenance, operation, and upgrade); Policy 24CC currently proposes that local authorities *consider providing for* relevant plan provisions That current drafting is not adequate; *to enable* is appropriately directive, whereas *consider providing for* fails to recognise either the significance of established infrastructure or the need to provide for its continued operation and benefits.
- b. Recognition that established activities can have effects (including cumulative) which are no greater in intensity, scale, or character over time⁹;

⁶ NPSIB 3.16(2).

⁷ NPISB 1.4(2).

⁸ NPSIB 3.15(2).

⁹ NPSIB 3.15(2)(a).

- c. Direct that the established activity do not result in the loss of extent, or degradation¹⁰; (ie not be required, where practicable, to enhancement or restore).
- 5.3 In forming this view, I have considered whether reference back to Policy 24C (as directed by the Policy 24CC Explanation) or to Policy 47(l) (which references 'tests in NPSIB 3.15(2)) would provide sufficient guidance. I do not consider either Policy 24C or Policy 47 to adequately address established activities for the following reasons.
- 5.4 Policy 24C does not differentiate between established and new development which is consistent with for NZCPS Policy 11 environs, and does not reflect the NPSIB 3.15 for established activities occurring in non-NZCPS Policy 11 areas.
- 5.5 Further, Policy 24C does not reflect other NZCPS provisions which:
- a. accepts existing infrastructure is already part of the coastal environment (eg. Preamble: *the coastal environment contains established infrastructure connecting New Zealand* [...]); and Policy 1 which recognises infrastructure has modified the coastal environment);
 - b. recognises infrastructure importance (eg. Policy 6(1) (a) and (b));
 - c. enables communities to provide for (among other things) wellbeing through activities (including infrastructure) which have a functional need to locate in the coastal environment (Objective 6, 3rd bullet, Policy 6(2)(c)); and
 - d. anticipate infrastructure being protected (Policy 27(c)).
- 5.6 The Supreme Court decision on *Port of Otago Limited v Environmental Defence Society Incorporated and Others*¹¹ addressed the relationship between directive NZCPS – Policy 9 and avoidance policies (including Policy 11). Some comparisons can be drawn between NZCPS Policy 6 and Policy 9 in terms of the *directive* nature of Policy 6.
- 5.7 Overall, the Court's decision indicates that, for directive policies, there is no presumption that one policy will always prevail over another, rather, an analysis of each individual circumstances is necessary. This further reinforces that a more

¹⁰ NPSIB 3.15(2)(b).

¹¹ SC6/2022 [2023] NSCC 112

nuanced approach within the coastal environment to established infrastructure is needed.

- 5.8 Policy 47 is a consideration policy and as such has a time-limited application.
- 5.9 Policy 47 is activated when considering if an activity has adverse effect on significant biodiversity and whether that activity is inappropriate; while helpful, it does not direct local authorities to provide enabling plan provisions.
- 5.10 Finally, unrelated to above, it is unclear why 'consultation' with GWRC, DOC and mana whenua would be required (relative to other policies) beyond it being a copy of Natural Resources Plan P39(c) text.
- 5.11 Overall, I consider that there remain important aspects of these provisions where significant improvement is required, in order to direct local authority planning documents to provide for established activities within coastal environment SNAs which are outside NZCPS Policy 11.

6 CONCLUSION

- 6.0 Overall:
 - a. I continue to support the recommended changes in my **Summary Statement** (Attachment A).
 - b. I consider that Policy 24C(3) should be further refined to reflect the 'avoid, remedy, mitigate' approach for other/non-significant effects in Policy 11(b) areas;
 - c. Additional changes are necessary to ensure that lower order planning documents contain provision to ensure that established activities are enabled within coastal environment / SNA areas which are outside NZCPS Policy 11.

Cath Heppelthwaite
17 May 2024

Appendix A

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Change 1 Hearing Stream 6

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

Dated 22 February 2024

1 INTRODUCTION, QUALIFICATIONS AND EXPERIENCE

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

1.1 My Primary Statement¹ describes:

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

2 SCOPE OF STATEMENT

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

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

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

¹ Dated 30 January 2024.

3 AREAS AGREED

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

² Rebuttal Evidence, paragraph 34

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

4 FURTHER AMENDMENTS: POLICY 24A AND APPENDIX 1A

- 4.0 Mr Wyeth's changes proposed to Policy 24A (a) and (b) do not (in my view) materially change the policy outcome and amendments to 24A(c) will improve consistency. I support these changes.
- 4.1 Mr Wyeth⁴ also notes that the intent of Policy 24A and Appendix 1A is to make it clear that biodiversity offsetting affecting one of the listed ecosystems and species is inappropriate unless a net gain can be achieved and to ensure that this is assessed in a robust manner. I agree with this statement.
- 4.2 Mr Wyeth recommends⁵ inclusion of new Policy 24A clause (d):

to allow for advances in technical methods that may make offsetting technically feasible where it currently isn't and that the column in Appendix 1A titled "Policy 24A(b) (a)(i) No appropriate site, knowledge, methods, expertise, mechanism" may not provide for.

Mr Wyeth's proposed wording is:

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

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

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

⁴ Rebuttal Evidence, paragraph 81.

⁵ Rebuttal Evidence, paragraph 84.

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

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

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

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

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

Appendix 1A: Limits to biodiversity offsetting and biodiversity compensation¹

[...]

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

[...]

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

Wetland ecosystems

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

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

5 FURTHER AMENDMENTS: APPENDIX 1C

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

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

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

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

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

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

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

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

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

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

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

(a) [...]

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

6 CONCLUSION

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

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

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

Cath Heppelthwaite
22 February 2024

Attachment A: Proposed Changes

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

Policy 24A and Appendix 1A

Policy 24A [...]

~~(d) In evaluating whether biodiversity offsetting or aquatic offsetting is inappropriate because there are no technically feasible methods to secure gains in acceptable timeframes, recognise that this is likely to be inappropriate for those species and ecosystems listed in column Policy 24A(d) in Appendix 1A; and~~

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

Appendix 1A: Limits to biodiversity offsetting and biodiversity compensation¹

[...]

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

[...]

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

Wetland ecosystems

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

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

Appendix 1C: Biodiversity offsetting and aquatic offsetting

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

(a) [...]

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