

**Masterton, Carterton and South  
Wairarapa District Councils**

**Proposed Wairarapa Combined District Plan**

**Decisions of the Hearings Panel**

**Decision Report 6**

**Hearing Stream 6: Ecosystems and Indigenous  
Biodiversity, Coastal Environment, Natural Character,  
Natural Features and Landscapes and Public Access**

**8 October 2025**

This report contains the Panel's decisions on submissions addressed as part of **Hearing Stream 6**, namely those submissions on the following chapters in **Part 3** of the Proposed Plan:

- **Ecosystems and Indigenous Biodiversity Chapter**
  - i. Appendix ECO-1 Pest Plant Species
  - ii. Schedule 5: Significant Natural Areas
  - iii. Schedule 6: Recommended Areas for Protection
  - iv. Subdivision within a Significant Natural Area
  - v. Definitions relating to Ecosystems and Indigenous Biodiversity
- **Coastal Environment Chapter**
  - i. Coastal Environment overlay
  - ii. Foreshore Protection Area overlay
  - iii. High and Very High and Outstanding Natural Character overlay
  - iv. Subdivision within the Coastal Environment
  - v. Definitions relating to the Coastal Environment
- **Natural Character Chapter**
  - i. Schedule 11: Significant waterbodies
  - ii. Significant Waterbodies identified by the Planning Maps
- **Natural Features and Landscapes Chapter**
  - i. Schedule 7: Outstanding Natural Features and Landscapes
  - ii. Schedule 8: Special Amenity Landscapes
  - iii. Outstanding Natural Features and Landscapes overlay identified by the Planning Maps
  - iv. Special Amenity Landscapes overlay identified by the Planning Maps
  - v. Subdivision within an Outstanding Natural Features and Landscapes
  - vi. Definitions relating Outstanding Natural Features and Landscapes
- **Public Access**
  - i. Subdivision rules and standards relating to public access

Submissions on other chapters of the Proposed Plan do not form part of this report and are addressed in other decision reports, as follows:

- Definitions as a whole (**Decision Report 1**).
- Rural Zones (**Decision Report 3**).
- The subdivision provisions as a whole (**Decision Report 6**).
- Energy and Network Utilities (**Decision Report 7**)
- Substantive rezoning requests (**Decision Report 11**).

This report contains the following appendices:

**Appendix 1:** Schedule of attendances

**Appendix 2:** Summary table of decisions on each submitter point

**Appendix 3:** Amendments to the Proposed Plan<sup>1</sup> – Tracked from notified version (provisions not subsequently renumbered)

**Appendix 4:** Amendments to the Proposed Plan provision wording – Accepted (provisions renumbered as they will appear in the Decisions Version of the Plan)

This report should be read in conjunction with the **Index Report**.

The Hearings Panel for the purposes of **Hearing Stream 6** comprised Commissioners, Robyn Cherry-Campbell (Chair), David McMahon, Jo Hayes, Craig Bowyer, Brian Deller and Alistair Plimmer.

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<sup>1</sup> Including Schedules 5 - 11

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# 1 Introduction

## Report outline and approach

- 1.1 This is **Decision Report 6** of twelve Decision Reports prepared by the Hearings Panel appointed to hear and make decisions on submissions to the Proposed Wairarapa Combined District Plan (PDP).
- 1.2 This report contains the Panel's decisions on submissions addressed as part of Hearing Stream 6, namely those submissions on the following chapters in Part 3 of the Proposed Plan, but also the relevant parts of Part 1 and Part 2:
  - a. Ecosystems and Indigenous Biodiversity Chapter
  - b. Coastal Environment Chapter
  - c. Natural Features and Landscapes Chapter
  - d. Sections of the Subdivision chapter relevant to the Ecosystems and Indigenous Biodiversity, Coastal Environment and Natural Features and Landscapes overlays and public access
  - e. Definitions relevant to the Ecosystems and Indigenous Biodiversity, Coastal Environment and Natural Features and Landscapes chapters
  - f. The spatial extent of the relevant Ecosystems and Indigenous Biodiversity, Coastal Environment and Natural Features and Landscapes overlays identified on the Planning Maps.
- 1.3 Based on the above, we have structured our discussion for these chapters as follows:
  - a. Section 2 addresses those submissions on the Ecosystems and Indigenous Biodiversity Chapter provisions and associated appendix, schedules, mapping overlays, definitions and relevant subdivision provisions.
  - b. Section 3 addresses those submissions on the Coastal Environment Chapter provisions, associated mapping overlays, definitions and relevant subdivision provisions.
  - c. Section 4 addresses those submissions on the Natural Character Chapter, associated schedules, mapping overlays, definitions and relevant subdivision provisions.
  - d. Section 5 addresses those submissions on the Natural Features and Landscapes Chapter, associated schedules, mapping overlays, definitions and relevant subdivision provisions.
  - e. Section 6 addresses those submissions on the subdivision provisions relating to public access.

1.4 In each case, Sections 2 to 6:

- i. provide a summary of the relevant provisions;
- ii. provide a brief overview of submissions received on the topic;
- iii. identify the key issues raised in submissions for our subsequent evaluation; and
- iv. evaluate the key issues remaining in contention and set out our decisions.

1.6 Section 7 provides an overall set of conclusions on matters addressed as part of Hearing Stream 6.

1.7 This Decision Report contains the following appendices:

- a. **Appendix 1: Schedule of attendances** at the hearing on the relevant topics. We refer to the parties concerned and the evidence they presented throughout this Decision Report, where relevant.
- b. **Appendix 2: Summary table of decisions on each submission point.** For each submission point and further submission point we provide a decision as to whether it should be accepted or rejected.
- c. **Appendix 3: Amendments to the Proposed Plan – Tracked from notified version.** This sets out the final amendments we have determined to be made to the PDP provisions relating to the relevant topics. The amendments show the specific wording of the amendments we have determined and are shown in a 'tracked change' format showing changes from the notified version of the PDP for ease of reference.

Where whole provisions have been deleted or added, we have not shown any consequential renumbering, as this method maintains the integrity of how the submitters and s42A Report authors<sup>2</sup> have referred to specific provisions, and our analysis of these in the Decision Reports. New whole provisions are prefaced with the term 'new' and deleted provisions are shown as struck out, with no subsequential renumbering in either case. The colour coding used for the different rule status has not been changed. In this version where a list is included within a particular whole provision, and items have been added or deleted from a list the numbering does, however, run as sequential.

- d. **Appendix 4: Amendments to the Proposed Plan provision wording - Accepted.** This accepts all the changes we have determined to the provision wording from the notified version of the PDP as shown in **Appendix 3** and includes consequential renumbering of provisions to take account of those provisions that have been deleted and new provisions we have added. **Appendix 4** does not include updates to the mapping layer, which can be found in the Decisions Version of the Plan Map Viewer.

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<sup>2</sup> For the purposes of Hearing 3, these were Mr Horrell, consultant planner, and Ms Chambers, agribusiness and environmental consultant.

- 1.5 The requirements in clause 10 of the First Schedule and section 32AA of the Act are relevant to our considerations of the submissions to the PDP provisions. These are outlined in full in the **Index Report**. In summary, these provisions require among other things:
- a. our evaluation to be focused on changes to the proposed provisions arising since the notification of the PDP and its s32 reports;
  - b. the provisions to be examined as to whether they are the most appropriate way to achieve the objectives;
  - c. as part of that examination, that:
    - i. reasonable alternatives within the scope afforded by submissions on the provisions and corresponding evidence are considered;
    - ii. the efficiency and effectiveness of the provisions is assessed;
    - iii. the reasons for our decisions are summarised; and
    - iv. our report contains a level of detail commensurate with the scale and significance of the changes decided.
- 1.6 We have not produced a separate evaluation report under s32AA. Where we have adopted the recommendations of the Reporting Officers, we have adopted their reasoning, unless expressly stated otherwise. This includes the s32AA assessments contained within the relevant s42A Reports, Summary Statements and/or Reply Statements and may also include the s32 or s32AA assessments provided by submitters where Reporting Officers rely on those. Those reports are part of the public record and are available on the webpage relating to the PDP hearings: <https://www.wairarapaplan.co.nz/hearings>
- 1.7 Where our decisions differ from the recommendations of Reporting Officers, we have incorporated our s32/s32AA evaluation into the body of our report as part of our reasons for the decided amendments, as opposed to including this in a separate table or appendix.
- 1.8 A fuller discussion of our approach in this respect is set out in the **Index Report**.

## 2 Ecosystems and Indigenous Biodiversity

### Outline of matters addressed in this section

- 2.1 With respect to the PDP's approach to protecting and otherwise maintaining and enhancing ecosystems and indigenous biodiversity as set out in the ECO – Ecosystems and Indigenous Biodiversity chapter, this section of our Decision Report:
- a. addresses a number of overarching and inter-related issues relating to the application of the higher order policy framework, and specifically:
    - i. Section 6(c) of the RMA;
    - ii. the NPS-IB;
    - iii. the operative RPS; and
    - iv. Proposed Change 1 to the RPS, now that the period for referring decisions on submissions to the Proposed Change to the Environment Court has closed;
  - b. provides a summary of the relevant notified provisions;
  - c. provides a brief overview of submissions received on the provisions;
  - d. provides a summary of the recommended amendments that the Panel adopts; and
  - e. evaluates and sets out our decisions on the key issues remaining in contention; which we have identified as comprising the extent to which ECO chapter provisions:
    - i. relating to the identification and protection of areas of significant indigenous vegetation or habitats of indigenous fauna and the management of effects within those areas give effect to Section 6(c) of the RMA, the NPS-IB and RPS (inclusive of Proposed Change 1);
    - ii. relating to the management of effects on indigenous vegetation outside of areas of significant indigenous vegetation or habitats of indigenous fauna give effect to that higher order policy framework referred to in i. above;
    - iii. should exempt the development, operation, maintenance, or upgrade of renewable electricity generation activities or electricity transmission activities; and
    - iv. give effect to the NZCPS and RPS (inclusive of Proposed Change 1) where the protection of indigenous biodiversity in the Coastal Environment is concerned.

## Higher Order Policy Framework

- 2.2 The following higher order documents are a relevant consideration to the evaluation of matters in relation to the Ecosystems and Indigenous Biodiversity Chapter.

### *Section 6 (c) of RMA*

- 2.3 In the first instance, we consider Section 6(c) of the RMA, which identifies that “the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna” is a matter of national importance, which shall be recognised and provided for when managing the use, development, and protection of natural and physical resources.
- 2.1 To achieve the purpose of the RMA and promote sustainable management, the PDP must identify and protect significant areas of indigenous vegetation and habitats of indigenous fauna as a matter of national importance. This will be considered in conjunction with the contested issues forming the final sub-section of this decision report.

### *NPS-IB*

- 2.2 It is also important to set out our understanding of the application of the NPS-IB with respect to the PDP. This is in large part because the bulk of submissions and evidence remaining contested during the course of the hearing related to the extent to which the PDP, should, or could, give effect to that higher order direction, among others.
- 2.3 In that respect, it is worth noting that the period over which the PDP was prepared partly intersected with the lengthy development and evolution of the NPS-IB<sup>3</sup>. This two-horse handicap race was eventually only won by a nose by the NPS-IB, although it had started much earlier. The original version of the NPS-IB came into effect in July 2023, just ahead of the notification of the PDP in October 2023.
- 2.4 At first glance, that outcome might suggest that the PDP was obliged to give full effect to the NPS-IB upon the former’s notification, and that the implications of this higher order direction for the approach taken in the PDP would have been ascertainable somewhat in advance; not least through the release of exposure or consultation drafts in the lead-up to the NPS-IB’s adoption.
- 2.5 While clause 4.1(1) of the NPS-IB obliges local authorities to give effect to it “*as soon as reasonably practicable*”, the NPS appears to implicitly acknowledge that the preparation of, or change to, plans to give that required effect is a formidable task involving the building of a credible evidential base and community and landowner engagement and buy-in, in effectively affording councils time to undertake that groundwork in the lead up to publicly notifying the resulting plans or plan changes.
- 2.6 As it was originally worded, clause 4.2(1) of the NPS-IB 2023 required councils to publicly notify plans or changes to plans within five years of commencement (i.e. by 4 July 2028 at the latest) to give effect to subpart 2 of Part 3 relating to the identification and protection of SNA.

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<sup>3</sup> Well over a decade from inception (2010) to gazettal (2023).

- 2.7 That required timing as set out in the NPS-IB was amended in October 2024 by the Resource Management (Freshwater and Other Matters) Amendment Act 2024. This extended the timeframe for giving effect to subpart 2 of Part 3 to 31 December 2030<sup>4</sup>. The purpose of this delay was for the Government to give itself time to consider how SNA should be identified, assessed, and managed in the NPS-IB, and then, for councils to implement the resulting directives.
- 2.8 The only exception to this extension countenanced in the amended NPS-IB applies with respect to the giving of effect to clause 3.16, relating to the inclusion in plans of directions requiring significant adverse effects of activities on indigenous biodiversity outside SNA to be managed by applying the effects management hierarchy. Where these plan provisions are concerned, councils are still obliged to publicly notify them within five years of commencement<sup>5</sup>.
- 2.9 Having made these observations about the evolving higher order framework, we do acknowledge and accept the position presented by counsel for DoC and Forest and Bird that as the Amendment Act took effect after the PDP was notified, it does not impact on Councils' obligations to implement the NPS-IB.
- 2.10 Essentially, this comes down to a timing issue where the future Schedule 1 RMA process is concerned. Either the Councils' are held to the timeframes specified in the 2023 version of the NPS-IB, or the timeframes specified in the 2024 version. Respectively, these are July 2028 for SNA<sup>6</sup> and July 2031 for non-SNA values<sup>7</sup>, and December 2030 for SNA<sup>8</sup> and either July 2028 or October 2029 for non-SNA values<sup>9</sup>. In any event, the Councils have a reasonable period within which they are obliged to give full effect to the NPS-IB. It remains for the Councils to develop a programme for the required groundwork and engagement that corresponds with the available window under the NPS-IB.
- 2.11 In the next sub-section, we provide a summary of the ECO chapter provisions as notified observing, in doing so, that by the Councils' own admission they largely represent a roll-over of the provisions contained in the Operative District Plan, albeit with some limited amendments to align with the NPS-IB, without affecting the functionality of the PDP.
- 2.12 In this respect, it is the position of the Councils' that to do anything other than adopt the *status quo* was not feasible given:
- a. uncertainties surrounding the exact content and timing of the NPS-IB in the lead up to the notification of the PDP; and
  - b. the insufficient period (i.e., four months) between gazettal of the NPS-IB and the notification of the PDP to enable the retrofitting of the latter to align with the former.

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<sup>4</sup> Via new clause 4.2(2)

<sup>5</sup> Via an amended clause 4.2(1)

<sup>6</sup> clause 4.2(1), NPS-IB 2023

<sup>7</sup> clause 4.1(2), NPS-IB 2023

<sup>8</sup> clause 4.2(2), NPS-IB 2024

<sup>9</sup> clause 4.2(1), NPS-IB 2024. The uncertainty here is over whether 'commencement date' refers to the NPS-IB 2023 or the NPS-IB 2024.

- 2.13 The Councils' have indicated their intention to undertake the necessary groundwork and engagement to develop provisions that are fully aligned with the requirements of the NPS-IB and other higher order direction and progress these by means of a Schedule 1 RMA process within the timeframes specified in the NPS-IB.
- 2.14 At this point, and prior to turning our minds to the detailed arguments and positions taken in evidence on contested matters, we set out some interim observations, as follows:
- a. to give full effect to the NPS-IB, particularly where the groundwork necessary to identifying SNA in accordance with NPS-IB criteria is concerned, is not a task to be underestimated;
  - b. it is difficult to see how the Councils' could have given anything other than limited effect to the NPS-IB in the notified version of the PDP, given the state of flux associated with the former, and the need for the groundwork referred to above to be undertaken on the basis of a settled approach to identification in a final version of the NPS-IB;
  - c. partly in acknowledgement of such situations, perhaps, the NPS-IB builds in an explicit 'grace period' within which councils are obliged to give full effect to it;
  - d. the Councils' concerned have indicated that they do not currently have the resources to undertake that groundwork and associated community engagement; and
  - e. even if the results of that work were available at this point in time, there appears to be no clear pathway under the current hearings process to substantially amend the provisions as notified as, in the interests of natural justice and fairness, it is apparent to us that the resulting provisions could only be progressed by way of a subsequent Schedule 1 RMA process (commensurate with the timeframes specified in the NPS-IB) so as to provide interested and affected parties with the ability to make submissions and have them heard.
- 2.15 Having reached these preliminary conclusions, the key question that remains for us to resolve is to determine what amendments to the PDP of a less substantial nature, that do not raise questions of natural justice and fairness, should and can be made in response to the relief sought in submissions, to bring its provisions more closely into alignment with the NPS-IB, and as an 'interim' measure in advance of a future Schedule 1 RMA process.
- 2.16 Necessarily, such amendments will likely need to be limited to the policy framework and associated matters of control and discretion in rules, as opposed to the wholesale identification of new SNA or substantive remodelling of controls relating to other indigenous biodiversity values. These are the matters we turn our minds to in the final sub-section of this Decision Report.

### ***The Operative RPS***

- 2.17 The final higher order document, in terms of its bearing on the PDP, that we need to account for, are the provisions of the Operative RPS. The second-generation RPS was made operative on 24 April 2013. The RPS contains a section on indigenous

ecosystems<sup>10</sup> which contains one objective and references five policies<sup>11</sup>. Under the umbrella of the objective, which seeks to ensure that indigenous ecosystems and habitats with significant biodiversity values are maintained and restored to a healthy functioning state, the policies focus on the identification, protection and management of effects on such values. District plans are identified as a key vehicle for delivery of these policies which, given their operative nature, must be 'given effect to'<sup>12</sup>.

- 2.18 The operative provisions of the RPS do not specify dates by which these mechanisms are to be put in place, but we do observe that they predate the advent of the NPS-IB, which does take that additional step.

### ***Proposed Change 1 to the RPS***

- 2.19 Proposed Change 1 to the RPS would have the effect of replacing or amending the Operative RPS provisions referred to above. As such, this is the final higher order direction that we need to give consideration to. As the provisions remain 'proposed', they are something to 'have regard to' where the PDP is concerned<sup>13</sup>; a lesser obligation than that applying to operative provisions.
- 2.20 Proposed Change 1 was notified in August 2022 and hearings took place over June 2023 to April 2024. The focus of Proposed Change 1 is to implement and support the NPS-UD and to start the implementation of the NPS-FM. It also addresses issues related to climate change and indigenous biodiversity. As such, it was developed and then publicly notified prior to the initial gazettal of the NPS-IB in July 2023.
- 2.21 As Ms Wheatley noted in her s42A Report<sup>14</sup>, in comparison with the notified version, the Decision Version of Proposed Change 1 incorporates substantive changes to the provisions relating to indigenous biodiversity, as a means of giving effect to the NPS-IB. Of particular relevance are amendments to Objective 16 and Policies 23, 24 and 47 that, collectively, insert deadline dates of 4 August 2028 for the identification and protection of sites with significant indigenous biodiversity values in district plans and provide guidance on how biodiversity offsetting and compensation should be undertaken, including limitations.
- 2.22 Decisions on submissions to Proposed Change 1 were released on 5 October 2024, in the same month that the NPS-IB was reissued with its amended implementation timelines, and a little over two months prior to the commencement of the hearing on the ecosystems and biodiversity topic in the PDP. The period for lodging references (appeals) on those decisions ended on 18 November 2024.
- 2.23 We have identified two reasons why our consideration of the Proposed Change 1 provisions must be tempered.

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<sup>10</sup> Section 3.6

<sup>11</sup> Objective 16 and Policies 23, 24, 47, 61 and 67

<sup>12</sup> s75(3)(c), RMA

<sup>13</sup> s74(2)(a)(i)

<sup>14</sup> para 39, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

- 2.24 Firstly, as we noted in our Index Report<sup>15</sup>, in response to a request from us<sup>16</sup>, Reporting Officers provided us with an inventory of Proposed Change 1 provisions that were subject to appeals to the Environment Court<sup>17</sup>. This inventory indicates that the provisions relating to ecosystems and indigenous biodiversity in Proposed Change 1 are broadly subject to appeal. Notwithstanding that the provisions are subject to appeal, they signal a significant shift in regional direction, are implementing national direction and must be given weight and genuine thought and attention.
- 2.25 Secondly, the deadline dates set out in Policies 23 and 24 are intended to align with those in the NPS-IB but, due to a sequencing issue, these represent the dates (July 2028) as they stood in the NPS-IB on its initial gazettal, and not as subsequently amended via the Amendment Act 2024 (to December 2030). In our minds, it is clear that given their incorporation into a nationally mandated higher order document, the deadline dates in the revised NPS-IB must take precedence over those set out in a regional RPS; especially one where the relevant provisions are subject to appeal.
- 2.26 **Table 1** below presents the earliest and latest timeframes for giving effect to the NPS-IB requirements, with specific provisions modified by the Amendment Act highlighted.

| Requirement of NPS-IB                                                                                                                                                                                                                                                                  | Timeframe for giving effect       |                  |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------------------|
|                                                                                                                                                                                                                                                                                        | Earliest                          | Latest           |
| Clause 2.1: Objective e.g. overall maintenance of IB                                                                                                                                                                                                                                   | As soon as reasonably practicable | 4 August 2031    |
| Clause 2.2: All policies except Policy 6                                                                                                                                                                                                                                               | As soon as reasonably practicable | 4 August 2031    |
| Clause 2.2: Policy 6 (identify SNAs)                                                                                                                                                                                                                                                   | 25 October 2027                   | 31 December 2030 |
| Clause 3.2 – 3.7: Procedural requirements to giving effect to NPS-IB e.g. decision making principles etc                                                                                                                                                                               | As soon as reasonably practicable | 4 August 2031    |
| Clause 3.8(1), (6) and (8): requires a territorial authority to conduct assessments to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna that qualify as NPSIB SNAs areas of significant indigenous vegetation and significant habitats | 25 October 2027                   | 31 December 2030 |
| Clause 3.8(2)-(6) and (7): Requires a territorial authority to use the assessment criteria stipulated in the NPS-IB when including new SNAs in a district plan.                                                                                                                        | As soon as reasonably practicable | 4 August 2031    |

<sup>15</sup> Section 3 in that Report

<sup>16</sup> Via Minute 9, dated 4 December 2024

<sup>17</sup> Supplementary Reply Statement – Response to Minute 9: Status of Provisions in Plan Change 1 [sic] to RPS, undated

| Requirement of NPS-IB                                                                                                                                                                           | Timeframe for giving effect       |                  |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------|------------------|
|                                                                                                                                                                                                 | Earliest                          | Latest           |
| Clause 3.9(1): requires a territorial authority to notify a plan or plan change to include areas identified as qualifying as NPSIB SNAs                                                         | 25 October 2027                   | 31 December 2030 |
| Clause 3.9(2): requires a notified plan to include the location and attributes of identified SNAs.                                                                                              | 25 October 2027                   | 31 December 2030 |
| Clause 3.9(3): requires that a local authority must, when doing its 10-yearly plan review, assess its district in accordance with clause 3.8(1) and (2) to determine whether changes are needed | 25 October 2027                   | 31 December 2030 |
| Clauses 3.10 – 3.15, and 3.17: Directs how the adverse effects on identified SNAs are to be managed (including relevant exemptions)                                                             | As soon as reasonably practicable | 4 August 2031    |
| Clause 3.16: Directs how adverse effects on IB outside of SNAs is managed.                                                                                                                      | As soon as reasonably practicable | 4 August 2028    |
| Clauses 3.18 – 3.25: Procedural and specific requirements for territorial and regional authorities to follow when giving effect to the NPS-IB                                                   | As soon as reasonably practicable | 4 August 2031    |
| Clause 3.24: Information requirements                                                                                                                                                           | As soon as reasonably practicable | 4 August 2028    |

**Table 1:** Timeframes for giving effect to the NPS-IB

### *Strategic Direction objectives in the PDP*

- 2.27 Several strategic objectives are relevant to the Ecosystems and Indigenous Biodiversity topic and to key issues canvassed in this report. In particular, we emphasise the following objectives as amended by the Panel:

#### **CCR-OX | Renewable electricity**

Recognise the role of renewable electricity generation activities in meeting the New Zealand Government's national target for emissions reduction and generation of electricity from renewable resources to contribute to the transition to a low-carbon future.

#### **HC-O2 | Tangata whenua identity and values**

Sites and features that have special qualities and values that contribute to Rangitāne o Wairarapa and Ngāti Kahungūnu ki Wairarapa's sense of place and identity are recognised and protected.

#### **NE-O1 | Natural character, landscapes, features, and ecosystems**

Natural character, outstanding natural features and landscapes, and areas of significant indigenous vegetation and significant habitat of indigenous fauna

contribute positively to the Wairarapa's sense of place and identity.

#### **NE-O5 | Integrated management**

Freshwater, land, water bodies, ecosystems, and receiving environments are managed using an integrated approach, in collaboration with tangata whenua, the community, and other government entities.

#### **NE-O6 | Healthy ecosystems**

The biological diversity of indigenous species and habitats within the Wairarapa are maintained and enhanced, and restored where degraded.

- 2.28 Our observations and findings in relation to the application of Section 6 (c) of the RMA, the NPS-IB, Operative RPS and Proposed Change 1 to the RPS and the Strategic Direction objectives form a reference point for our consideration of contested matters in the final part of this section of this Decision Report.

### **Summary of the relevant notified provisions**

- 2.29 In the PDP, provisions relating to the protection of SNA and the maintaining and enhancing of other ecosystem and indigenous biodiversity values are set out in the standalone ECO – Ecosystems and Indigenous Biodiversity chapter, as directed by the National Planning Standards 2019.
- 2.30 Following an introductory section, the ECO chapter, as notified, outlines a broad approach to managing indigenous biodiversity, represented by Objective ECO-O1 and Policies ECO-P1, ECO-P2, ECO-P9 and ECO-P10 which, respectively, address the importance of coordination, collaboration, support and encouragement and the promotion of public awareness where protection and enhancement initiatives are concerned.
- 2.31 From that general starting point, Objective ECO-O2 and Policies ECO-P3, ECO-P4, ECO-P5, ECO-P6, ECO-P11 and ECO-P12 then provide a framework for identifying, protecting and managing effects within or adjacent to significant indigenous vegetation and habitat; thereby aligning, to a greater or lesser extent, with the focus on SNAs in subpart 2 of Part 3 of the NPS-IB (and particularly clauses 3.8 to 3.15) that we have covered in the previous sub-section. Seventy-seven SNA are identified on the PDP Maps and listed in Schedule 5 to the PDP.
- 2.32 Sitting under this policy framework, Rule ECO-R1 sets out a limited set of circumstances in which the modification of indigenous vegetation is provided for as a permitted activity (and otherwise as a discretionary activity) within identified SNA. This includes works to remove pest plant species identified in Appendix ECO-1.
- 2.33 The second part of the policy framework relates to management of activities and effects on other indigenous vegetation, as represented by Policies ECO-P7 and ECO-P8. As such it tends to address the matters covered in clause 3.16 of the NPS-IB. Rule ECO-R2, together with Standard ECO-S1, set out the broader circumstances in which modification of indigenous vegetation is provided for as a permitted activity, establishing a default restricted discretionary status beyond that provision.
- 2.34 Rule ECO-R3 and Standard ECO-R2 establish controls on the keeping and fencing of goats on sites in proximity to the Natural Open Space Zone (which essentially

represents the public conservation estate).

- 2.35 Aside from mapping and listing SNA, PDP also lists 58 "Recommended Areas for Protection" (RAP) in Schedule 6. These areas were identified by DoC in 2004 as containing "indigenous biodiversity values of significance" although not to the extent that they are identified as SNA in the PDP. They are included in the PDP for informational purposes, and no policies, rules or standards are formally tied to their inclusion. In practice, we surmise, they would at least form a reference point to assist in determining whether the 'general clearance' controls (Rule ECO-R2 and Standard ECO-S1) apply, in combination with field work.
- 2.36 For completeness, we take the opportunity at this point to note that, as at the notification of the PDP, all the ECO chapter rules and standards took immediate legal effect under s86B(3) of the RMA.
- 2.37 To a large extent, with some exceptions, the ECO chapter provisions, as notified, represent a roll-over of the provisions contained in the Operative District Plan. In the intervening period since the original provisions became operative, the higher-level policy framework has evolved, as noted in the previous sub-section. As we shall see, questions over the extent to which the PDP provisions do, or do not (but potentially should) give effect to that national and regional framework lie at the heart of the contested matters before us.

## Overview of submissions

- 2.38 As summarised in Ms Wheatley's s42 Report<sup>18</sup>, 164 submission points and 191 further submission points were received on the Ecosystems and Indigenous Biodiversity topic. Given that the PDP largely retains the *status quo* approach to managing ecosystems and indigenous biodiversity, many submitters have commented on the misalignment of the provisions with the NPS-IB, the Wellington RPS, and other higher order direction. As Ms Wheatley noted, the relief sought by submitters ranges from giving partial to full effect to these higher order directions<sup>19</sup>.
- 2.39 It is those contested matters relating to that degree of (mis)alignment that we need to turn most of our attention to. Firstly, however, and in line with the approach we have adopted in the other Decision Reports, we propose to cover off on other submission points to the ECO chapter provisions, that were generally not contested during the course of the hearing; where we adopt the recommendations of Reporting Officers<sup>20</sup> to partly or fully accept the submission points concerned together with consequential amendments to the provisions or, conversely, rejection of the points and no change to the provisions.

## Recommended amendments that the Panel adopts

- 2.40 As mentioned above, a number of issues raised in submissions were addressed by Ms Wheatley in her s42A Report and Hearing Summary Statement in a manner which meant there was little residual disagreement or active contest by the time of the hearing. With respect to these issues, we adopt the Reporting Officer's recommendations for amendment and their accompanying reasoning and s32AA evaluations. In sum, these amendments principally involve:
- a. to the **introductory text** to clarify the approach of the ECO chapter in response to a submission from Forest and Bird<sup>21</sup>;
  - b. the inclusion of a reference to "*no overall loss*" of "*indigenous*" (as opposed to "*biological*") biodiversity in **Objective ECO-O1** to align better with the NPS-IB in response to a submission from the Māori Trustee<sup>22</sup>;
  - c. the addition of a **new objective** recognising and providing for the relationship of tangata whenua and their traditions and culture with indigenous vegetation and fauna in response to a submission from the Māori Trustee<sup>23</sup>;
  - d. minor amendments to **Policies ECO-P1, ECO-P3, ECO-P5 and ECO-P7** in response to submissions from Fish and Game, the Māori Trustee, GWRC and Forest and Bird<sup>24</sup> and in response to evidence presented by Ms Levenson on

<sup>18</sup> para 15, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity, 18 November 2024

<sup>19</sup> para 6, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity, 18 November 2024

<sup>20</sup> We note that Ms Wheatley was responsible for preparing the s42A Report and Summary Statement, whereas Mr Horrell and Wesney have latterly been involved in responding on this topic.

<sup>21</sup> For the reasons set out in paras 362 and 376 to 379, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>22</sup> For the reasons set out in paras 70 and 92 to 95, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>23</sup> For the reasons set out in paras 90 and 92 to 95, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity. In this respect we accept the advice of Reporting Officers in response to a query from us that we do not have sufficient scope to further amend the new objective in the manner suggested by Ms Bangi, for GWRC, for the reasons outlined in paras 32 to 26, Officer's Reply Statement – Ecosystems and Indigenous Biodiversity, undated

<sup>24</sup> For the reasons set out in paras 105, 119, 152, 191 and 226 to 229, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

behalf of Horticulture NZ and Ms Foster on behalf of East Leigh Ltd and Meridian Energy<sup>25</sup>;

- e. amendments to Rule **ECO-R1** to clarify that trimming is permitted where required to address an imminent danger to an electricity line and to insert a new restricted discretionary activity rule where limitations on the nature of trimming for such purposes are not met, in response to a submission from Transpower<sup>26</sup>;
- f. an amendment to Rule **ECO-R2** to remove reference to the Forests Act 1949 in response to a submission from DoC<sup>27</sup>;
- g. an amendment to Standard **ECO-S1** to clarify the spatial application of clause (3)(b) in response to a submission from Transpower<sup>28</sup>;
- h. an amendment to Rule **SUB-R7** relating to the subdivision of land within SNA to alter the consent status from a controlled to a restricted discretionary activity and include a cross-reference to Policy ECO-P6, in response to a submission from Forest and Bird<sup>29</sup>;
- i. to amend the **definitions** for 'conservation activities', 'customary activities', 'modification' and 'significant natural area', to replace and further amend the definition for 'indigenous vegetation', and to correct a numbering error in relation to the definition for 'natural inland wetland' in response to submissions from DoC, Forest and Bird and Genesis Energy and in response to evidence presented by Ms Schipper on behalf of DoC and Ms Foster on behalf of Meridian Energy<sup>30</sup>;
- j. to add the NPS-IB **definition** for 'biodiversity compensation', delete the notified definition for 'environmental compensation' and amend the definition for 'biodiversity offset' to align with that used in the NPS-IB in response to evidence presented by Ms Foster on behalf of Meridian Energy<sup>31</sup>; and
- k. to rectify errors arising from the tracked version of the ECO provisions not accurately reflecting certain recommendations in the accompanying s42A report<sup>32</sup>.

2.41 A more detailed summary of the nature of recommended amendments to the ECO chapter provisions that we have adopted and that collectively arose in response to both submissions is set out in Section 7 of the s42A Report<sup>33</sup> and additionally, and in

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<sup>25</sup> For the reasons set out in paras 27 to 30, 56, 64 and 78, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>26</sup> For the reasons set out in paras 242 and 265 to 268, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>27</sup> For the reasons set out in paras 259 and 265 to 268, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>28</sup> For the reasons set out in paras 280 and 284 to 287, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>29</sup> For the reasons set out in paras 295 to 299, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>30</sup> For the reasons set out in paras 314, 324, 328, 329, 336 and 349 to 352, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity and paras 19, 29 and 78, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>31</sup> For the reasons set out in paras 65 to 68 and 78, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>32</sup> As set out in paras 77 and 78, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>33</sup> Section 7, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity and Section 5, Summary Statement – Ecosystems and Indigenous Biodiversity

relation to pre-circulated evidence, in Section 5 of Ms Wheatley's Summary Statement. Aside from Ms Wheatley's recommendations relating to contested matters, which we need to further consider in the light of all evidence presented to us, as set in the following sub-section, we also adopt her reasons for recommending the retention of the provisions as notified, in situations where she considered no amendments were warranted.

### **Decisions on key issues remaining in contention**

- 2.42 Having set out our preliminary observations and findings with respect to higher order directives, summarised the PDP provisions as notified and the tenor of submissions and the recommendations of Reporting Officers that we are prepared to adopt, we are now in a position to evaluate and decide on the matters remaining in contention during the course of the hearing.
- 2.43 As a reminder, these matters comprise the extent to which ECO chapter provisions:
- a. relating to the identification and protection of areas of significant indigenous vegetation or habitats of indigenous fauna and the management of effects within those areas give effect to s6 of RMA, the NPS-IB and the RPS (inclusive of having regard to Proposed Change 1);
  - b. relating to the management of effects on indigenous vegetation outside of areas of significant indigenous vegetation or habitats of indigenous fauna give effect to that higher order policy framework referred to in a. above;
  - c. should exempt the development, operation, maintenance, or upgrade of renewable electricity generation activities/electricity transmission activities; and
  - d. give effect to the NZCPS and RPS (inclusive of Proposed Change 1) where the protection of indigenous biodiversity in the Coastal Environment is concerned.
- 2.44 In each case, and particularly where the first two matters are concerned, the extent to which the ECO provisions can give effect to higher order direction is in our view practically limited, for the reasons outlined in paragraphs 2.2 to 2.31 above. Our considerations in this sub-section are guided by our previous findings in this respect, and mean that we are generally focused on determining what improvements can be made to the provisions to further align them with that higher order direction:
- a. where that direction is sufficiently settled; and
  - b. where any amendments would not second-guess the outcomes of groundwork and community engagement required to support a Schedule 1 RMA process to more substantively give effect to that direction.

### ***The identification and protection of SNA and management of effects***

- 2.45 Having established the precepts above, the first matter we need to determine concerns the extent to which ECO chapter provisions relating to the identification and protection of SNA and the management of effects within those areas can give practical effect to s6 of the RMA, the NPS-IB and RPS (inclusive of having regard to Proposed Change 1).

- 2.46 In response to submissions from a number of entities including DoC, Forest and Bird, Genesis Energy and GWRC, the s42A Report<sup>34</sup> recommended reasonably substantive amendments to Policy ECO-P6 to incorporate the effects management hierarchy set out in the NPS-IB. Ms Wheatley also proposed an amendment to Policy ECO-P4 to directly cross-reference the amended Policy ECO-P6. In Ms Wheatley's view, those amendments to align with the NPS-IB were achievable without significantly departing from the *status quo* approach that the PDP necessarily took, and presented no difficulties in implementing Rules ECO-R1 and ECO-R2.
- 2.47 As we have alluded to previously, that *status quo* approach, in Ms Wheatley's words, represented:
- "an interim approach while the Councils collect further information and undertake further processes required in order to give effect to the NPS-IB. To date, the provisions of the Operative District Plan have so far been effective and efficient in meeting the objectives to protect, maintain, and restore indigenous biodiversity across the Wairarapa, and it is therefore unlikely that any significant losses to indigenous biodiversity values will occur while this work is undertaken."*<sup>35</sup>
- 2.48 In this context, Ms Wheatley also recommended an amendment to Policy ECO-P3 to include, as a potential means of identifying SNA, through resource consent processes applying the significance criteria set out in the RPS, in response to submissions from DoC and Forest and Bird. In her view, a cross-reference to the RPS criteria is preferable to those contained in the NPS-IB, given the Government's signalled intention to review the latter<sup>36</sup>.
- 2.49 Legal submissions presented by Mr Williams on behalf of Forest & Bird<sup>37</sup> set out the Society's position that the reliance on a *status quo* approach would be inappropriate as it would not fulfil the overarching obligation to give effect to NPS-IB *"as soon as reasonably practicable"*<sup>38</sup> or the operative RPS.
- 2.50 Mr Williams did, however, indicate that Forest and Bird supported Ms Wheatley's recommendation to include the full effects management hierarchy into Policy ECO-P6, thereby giving partial effect to clause 3.10 of the NPS-IB, and to amend ECO-P3 in the manner described above. However, in relation to SNA, the society continued to request that:
- a. the avoidance policies set out in NPS-IB clause 3.10(2) be included in the PDP and apply with respect to the SNA identified in the PDP;
  - b. Policy ECO-P3 be further amended to *"identify and protect"* SNA as a means of giving effect to the Operative RPS, and to ensure that records are kept for the purposes of future resource consenting and plan making, pending the Schedule 1 process anticipated by the NPS-IB;
  - c. the definition for 'significant natural area' be amended to refer to other areas

<sup>34</sup> paras 133, 170 and 226 to 229, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>35</sup> para 11, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>36</sup> paras 120 to 122 and 226 to 229, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

<sup>37</sup> Legal Submissions on behalf of the Royal Forest and Bird Protection Society of New Zealand Incorporated for Hearing Stream 6, 13 December 2024

<sup>38</sup> Clause 4.1(1)

that meet the RPS significant criteria, including those identified through resource consent processes; and

- e. that spatial limits on permitted clearance within SNA should be included in Rule ECO-R1 to improve clarity and remove ambiguity.
- 2.51 We heard similar legal submissions by Ms Anton on behalf of DoC in relation to the broad obligation on councils to give effect to the NPS-IB as soon as reasonably practicable<sup>39</sup>. Both she and Ms Schipper (DoC's planning witness) did acknowledge that the PDP was not required to give full effect to the NPS-IB at this stage, and that a separate Schedule 1 RMA process was necessary to fully give effect to both it and the RPS.
- 2.52 Ms Schipper, for DoC, proposed a series of amendments to the ECO chapter, including the definition for 'significant natural area' and to the policy framework and rules to specify stricter controls on activities both within SNA (and for areas outside SNA), and provide a 'cohesive path' for assessing proposals in areas not already identified as SNA in the PDP, as a means of giving greater effect to the NPS-IB.
- 2.53 In her evidence on behalf of GWRC, Ms Bangi acknowledged Ms Wheatley's partial acceptance of the relief sought by GWRC inclusive of the incorporation of the effects management hierarchy in Policy ECO-P6, but sought further amendments to this policy and to other provisions to bring the PDP into further (or even 'full') alignment with the NPS-IB and RPS (both operative and Proposed Change 1 elements).
- 2.54 In her Summary Statement, Ms Wheatley did recommend a consequential amendment to the definition for 'significant natural area' to include a similar cross-reference to RPS criteria, in response to the request from submitters above<sup>40</sup>.
- 2.55 The above changes, in her view, were achievable in the context of the *status quo*; an approach she did not resile from, noting that SNA identified in this way could only be incorporated into the District Plan by way of a Schedule 1 RMA process (e.g., the future amendment intended to give full effect to higher order directions).
- 2.56 In that context, Ms Wheatley indicated she was not otherwise amenable to the detailed requests outlined in evidence presented by Ms Schipper and Ms Bangi as, in her view, they would stray too far from the *status quo* approach, did not acknowledge the level of uncertainty arising from the Government's stated intention to revisit a national approach to identifying and protecting SNA, and would not be appropriately adopted in advance of that review<sup>41</sup>.
- 2.57 We note at this point that, consistently, throughout the presentation of their case, Council Reporting Officers have emphasised that, in their view, the provisions of the Operative District Plan have been effective in managing indigenous biodiversity values to date and that there is "limited risk" in continuing with the *status quo* approach in the interim before the work required to support a Schedule 1 RMA process bears fruit and higher order directions can be given effect to in an integrated and logical manner.

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<sup>39</sup> Legal Submissions for the Director-General of Conservation, 12 December 2024

<sup>40</sup> para 19, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>41</sup> paras 23 and 48, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

- 2.58 The Councils' broad position in this regard was ably summarised by Mr Horrell in his Supplementary Reply Statement<sup>42</sup>. We consider this bears repeating in part as follows:

*The PDP was notified on 5 October 2023. The Section 32 Report for the Ecosystems and Indigenous Biodiversity topic considered options for giving effect to the NPS-IB; however, the overall conclusion was that there was too greater risk of acting on uncertain and insufficient information in accordance with Section 32(2)(c) of the RMA to give substantive effect at that time. The following reasons were provided in support of this conclusion:*

- i. A comprehensive assessment of significant natural areas throughout the Wairarapa has not been undertaken and could not be undertaken in accordance with the NPS-IB criteria with the District Plan review timeframe,*
- ii There is insufficient information generally regarding indigenous biodiversity throughout the Wairarapa to revise general clearance standards,*
- iii Due to the timeframes, there is an inability to give effect to the 'decision-making principles' as required by the NPS-IB which will require effective partnership with tangata whenua.*

*The PDP rather adopted an approach that generally retained the 'status quo'. This approach relying on both regulatory and non-regulatory methods for the protection of significant indigenous vegetation and significant habitats of indigenous fauna, and the maintenance of indigenous biodiversity generally. The regulatory methods for protection set limitations on activities and effects on identified Significant Natural Areas (SNA), which reflect a 'roll over' of SNAs identified in the Operative District Plan.*

- 2.59 To test the Reporting Officers' premise regarding the 'effectiveness' of the operative provisions and the 'limited risk' presented by their roll-over, and aid our contextual understanding, we posed a number of questions at the close of the hearing. Specifically, and in relation to scheduled SNA (or potential SNA), we asked Reporting Officers to indicate:

- a. How many scheduled SNA have a covenant or other form of legal protection?*
- b. How many QEII National Trust covenants<sup>43</sup> are there within the Wairarapa that are not scheduled SNAs?*
- c. How many RAPs have a covenant or other form of legal protection?*
- d. Has the total area of land legally protected by other instruments (e.g., QEII National Trust covenant) changed since the Operative Plan was made operative in 2011? If so, what is the total land area of this increase?*
- e. Would the SNA criteria in the NPS-IB and RPS support the scheduled SNAs in*

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<sup>42</sup> paras 5 and 6, Supplementary Reply Statement – Minute 19: Further Directions Associated with Hearing 6 (Ecosystems and Indigenous Biodiversity), 28 February 2025

<sup>43</sup> Under the Queen Elizabeth the Second National Trust Act 1977

*the Proposed District Plan? Or would the spatial extent of the SNAs change?*

*f. What timeframe are the Councils planning for giving effect to the NPS-IB in terms of scheduling Significant Natural Areas?*

2.60 The Reporting Officers addressed these questions in their collective Reply Statement<sup>44</sup>. From this we gleaned the information that:

- a. some 51% of scheduled SNA are either partially or fully subject to some form of legal protection outside the PDP;
- b. some 221 parcels of land in the Wairarapa that are not otherwise scheduled in the PDP are protected by QEII National Trust covenants;
- c. it is not possible to advise how many RAP enjoy some form of legal protection given data quality issues;
- d. protective mechanisms have been imposed on land totalling just under 600 ha. in area in the Wairarapa since 2011;
- e. it is not possible to determine whether scheduled SNA would meet NPS-IB or RPS criteria for identification and whether that might lead to spatial changes, given the lack of historical information regarding their original delineation; and
- f. that the planning timeframe for giving full effect to the NPS-IB could not be confirmed as it relied on budget provisions by the Councils that were not yet made, but that the Councils were cognisant of the December 2030 deadline for a Schedule 1 RMA process imposed by the NPS-IB.

2.61 In the view of the Reporting Officers, the field work required to address the information gap noted in e. above would be best undertaken as part of a comprehensive approach to the development of that future Schedule 1 RMA process.

2.62 Relatedly, Reporting Officers also indicated, in response to queries from us, that the Councils had not undertaken state-of-the-environment or District Plan effectiveness monitoring in relation to ecosystems and indigenous biodiversity, nor had undertaken any enforcement actions in relation to the topic in the last ten years.

2.63 In the absence of active monitoring, we cannot comprehensively conclude from this enforcement 'inaction' that there has been no loss of biodiversity; however, neither have we been presented with any evidence to the contrary (e.g., examples of wholesale clearance in contravention to the operative provisions). On balance, in our minds, this tends to support the Council's position that there is at most "limited risk" in retaining the *status quo* approach in the intervening period before the additional protections in higher order directions can be brought to bear by way of a Schedule 1 RMA process.

2.64 Finally, the Officers' Reply Statement<sup>45</sup> also provided a response to queries that go to the first of the three fundamental issues before us, namely the extent to which

<sup>44</sup> paras 4 to 18, Officer's Reply Statement – Ecosystems and Indigenous Biodiversity, undated

<sup>45</sup> paras 19 to 24, Officer's Reply Statement – Ecosystems and Indigenous Biodiversity, undated

the PDP is able to give effect to higher order directions with respect to the identification and protection of SNA, and the managing of the effects of activities on SNA. Our verbal queries outlined during the hearing to the Reporting Officers were as follows:

- a. Does Change 1 to the Wellington RPS amend the indigenous biodiversity policies in the RPS? If so, does the Proposed Plan give effect to these amended policies?*
- b. Does the Proposed Plan give effect to clause 3.10(2) in the NPS-IB?*
- c. Discuss the requirements to give effect to Policies 23 and 24 in the Wellington RPS on identifying and protecting SNAs and explain how the Proposed Plan gives effect to these policies, including the relevance of RAPs.*

2.65 The responses of Reporting Officers on the above matters can be summarised as follows:

- a. Proposed Change 1 amends RPS Policies 23 and 24 to insert timeframes to undertake comprehensive mapping of SNA and include these in district plans in accordance with the August 2028 timeframes set out in the originally gazetted version of the NPS-IB.
- b. Proposed Change 1 also introduces Policies 24A and 24B which, respectively, prescribe the circumstances in which biodiversity offsetting and compensation are applied and requiring that district plans, also by August 2028, include provisions specifying the adverse effects that are to be avoided in SNA while otherwise applying the effects management hierarchy in relation to specific activities, and describe the limited circumstances in which activities are allowed in SNA.
- c. The giving of full effect to the amended RPS policies (beyond recommended changes in the PDP to align the definitions for biodiversity offsetting and compensation) and clause 3.10(2) of the NPS-IB is only something that can be achieved as a result of the groundwork referred to earlier and that in its current absence, the PDP can only give, at most, partial effect to the direction in the interim.

2.66 In their Reply Statement, Reporting Officers identified errors and omissions in Schedule 5 and in the definitions for 'biodiversity offsetting' and 'biodiversity compensation' that can be corrected with reference to clause 16, Schedule 1, RMA<sup>46</sup>.

2.67 To sum, then, Reporting Officers are of the view that all that can be done to align the PDP provisions with higher order directions has been, in terms of their final recommendations, without departing from a *status quo* approach; in anticipation that full alignment would be achieved via a Schedule 1 RMA process, commensurate with to-be-settled methodologies and in accordance with the allowable timeframes set out in that national direction.

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<sup>46</sup> paras 18 and 37, Officer's Reply Statement – Ecosystems and Indigenous Biodiversity, undated

- 2.68 We find ourselves in agreement with this position. We are of the view that, with respect to SNA, all the potential improvements to further align the PDP provisions with that higher order direction have been identified in evidence presented by the Reporting Officers, in a context where, as set out in paragraph 2.63 above, that direction is sufficiently settled and the amendments concerned would not second-guess the outcomes of groundwork and community engagement required to support the necessary Schedule 1 RMA process (which the submitters accept is a necessity). To be clear, then, we accept and adopt the recommendations for amendment summarised in paragraphs 2.49, 2.51, 2.53 and 2.57 of this Decision Report.
- 2.69 From our perspective, the outcome is adequate albeit not optimal, in that in adopting the proffered recommendations for amendment, the PDP will go forward with an approach that does not give full effect to higher order directions. However, we see this as an inevitability, given the long and uncertain gestation of the NPS-IB, the current limited weight to be given to RPS provisions that are subject to appeal, the timing of the development of the PDP relative to those higher order initiatives, and the absence of sufficient up-to-date information regarding indigenous biodiversity values in the Wairarapa.
- 2.70 We also perceive that the risks to indigenous biodiversity values in the intervening period ahead of the Schedule 1 RMA process are reduced by the backstop that the PDP provisions, building on the legacy of the Operative District Plan provisions, will provide. Submitters can take succour from the clear obligation that the Councils have in terms of achieving full alignment with national directives within a defined period, as set out in the NPS-IB.

***Indigenous vegetation outside of areas of significant indigenous vegetation***

- 2.71 The second matter we need to determine concerns the extent to which ECO chapter provisions relating to the management of effects on indigenous vegetation outside of areas of significant indigenous vegetation or habitat can give practical effect to s6 of RMA, the NPS-IB and RPS (inclusive of Proposed Change 1).
- 2.72 In contrast to the reasonably substantive amendments recommended by the Reporting Officer in response to submissions from DoC, GWRC and Forest and Bird, relating to the management of effects within SNA, Ms Wheatley initially recommended that no amendments be made to provisions focusing the management of effects on indigenous vegetation outside SNA.
- 2.73 In Ms Wheatley's view<sup>47</sup>, the requested amendments would shift the approach to managing non-SNA biodiversity values away from the *status quo* as an interim measure in advance of the anticipated Schedule 1 RMA process to give full effect to the NPS-IB.
- 2.74 We subsequently heard legal submissions and evidence from the submitters concerned maintaining that the provisions, as unamended, failed to give effect to clause 3.16 in the NPS-IB which, in part, required the application of the effects management hierarchy as a basis for managing significant adverse effects on indigenous biodiversity outside SNA. In that absence, submitters contended:

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<sup>47</sup> paras 188, 191, 201, 202, 260, 278, 281 and 282, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity

- a. Policy ECO-P7 appeared to encourage the clearance of indigenous vegetation;
  - b. the requirement to 'avoid, remedy or mitigate' adverse effects in Policy ECO-P8 did not reflect the correct sequential approach the managing such effects in higher order directives; and
  - c. Rule ECO-R2 and Standard ECO-S1 provided overly wide avenues to facilitate that clearance.
- 2.75 Submitters identified these matters as a weakness of the ECO chapter provisions, particularly in the absence of the giving of full effect to higher order obligations with respect to SNA.
- 2.76 Ms Wheatley did not subsequently resile from her view that no substantive amendments could be made to provisions relating to non-SNA values in advance of the future review, not least because of the impact on landowners, who would not otherwise be provided with an opportunity to engage on their implications<sup>48</sup>.
- 2.77 Relatedly, we did ask Reporting Officers at the close of the hearing to consider the option of excluding RAPs from Standard ECO-S1 including whether there might be scope to affect this.
- 2.78 The purpose of doing so was to explore whether, in excluding vegetation modification in RAP from the constraints imposed under Standard ECO-S1 (and therefore Rule ECO-R2), control of such an activity would fall to legal mechanisms such as QEII Trust covenants. Reporting Officers responded that they did not consider this to be an efficient or effective option and did not recommend that it be considered further<sup>49</sup>, and we let the matter rest there.
- 2.79 More substantively, we sought via a post-hearing Minute<sup>50</sup> to establish to what extent the PDP gave effect to clause 3.16 of the NPS-IB with respect to indigenous biodiversity values outside SNA.
- 2.80 In doing so, we alluded to the critique of the PDP's approach in respect as set out in the legal submissions presented by Mr Williams on behalf of Forest and Bird<sup>51</sup>. Specifically, we asked Reporting Officers to give a broad consideration to that critique and in particular to specifically considering the following matters:
- a. *the assertion that the PDP in its "current form" (i.e. as notified and otherwise as recommended for amendment by Reporting Officers) lacks policy directed towards the maintenance of indigenous biodiversity outside SNAs<sup>52</sup>;*
  - b. *the suggestion that the effects management hierarchy should be applied to activities with significant adverse effects on indigenous biodiversity outside SNAs<sup>53</sup>; and*

<sup>48</sup> paras 22 and 48, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>49</sup> paras 10 to 11, Officer's Reply Statement – Ecosystems and Indigenous Biodiversity, undated

<sup>50</sup> Minute 19, dated 19 February 2025

<sup>51</sup> paras 34 to 39, Legal Submissions on behalf of the Royal Forest and Bird Protection Society of New Zealand Incorporated for Hearing Stream 6, 13 December 2024

<sup>52</sup> *Ibid*, para 37

<sup>53</sup> *Ibid*, para 38

- c. *the observation that, to the contrary, Policy ECO-P7.a. – b. appears to encourage indigenous vegetation clearance*<sup>54</sup>.

2.81 As part of preparing their response, we requested that Reporting Officers:

- a. identify any further amendments to the ECO chapter provisions that they consider are required to address the concerns expressed in the legal submissions, to the extent that those concerns are considered valid;
- b. identify the available scope in submissions for making such amendments (if need is identified); and
- c. provide a suitable s32AA evaluation to accompany any such recommendations for amendment.

2.82 In responding to a. immediately above we anticipated that Reporting Officers would determine, on a non-prejudicial basis, whether there was scope in submissions and proffered evidence to introduce the effects management hierarchy into Policy ECO-P8 and insert more precise metrics relating to vegetation modification into Rule ECO-R2.

2.83 We acknowledge that Mr Horrell provided us with a Supplementary Reply Statement<sup>55</sup> on the matters above following our request. On the matters set out in both paragraphs 2.83 and 2.84 above, Mr Horrell's advice can be summarised as follows:

- a. That it was reasonable to infer that, at a minimum, the PDP should not enable activities that could give rise to significant adverse effects (with reference to the application of the effects management hierarchy in NPS-IB clause 3.16).
- b. That, consequentially, Policy ECO-P8 should be amended to include the effects management hierarchy to manage significant adverse effects on indigenous vegetation and habitats of indigenous fauna.
- c. That, in relation to changes requested by submitters to ECO-P7, ECO-R2 and ECO-S1, as they apply modification of indigenous vegetation outside SNA and, with reference to a s32AA evaluation, there remains too greater risk of acting on insufficient information to adopt the requests.
- d. Specifically, that there was insufficient information to indicate that the *status quo* had been ineffective or to constitute the social, economic and cultural costs of adopting the alternative option.

2.84 On that basis, Mr Horrell did not recommend that the changes sought by Forest and Bird be accepted, although he acknowledged that there existed suitable scope to make them. However, in the event that we were minded to accept (wholly or in part) the relief sought by Forest and Bird, Mr Horrell provided us with a version of Policy ECO-P7 and Rule ECO-R2 which effectively expunged the enabling of the removal of kanuka, manuka and tauhini species and other, lower-level vegetation as a permitted

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<sup>54</sup> *Ibid*, para 39

<sup>55</sup> Supplementary Reply Statement – Minute 19: Further Directions Associated with Hearing 6 (Ecosystems and Indigenous Biodiversity), 28 February 2025

activity outside SNA (and also would see the deletion of Standard ECO-S1 in full).

- 2.85 We appreciate Mr Horrell's openness to further considering means, at this point, to bring the ECO chapter provisions relating to indigenous biodiversity outside SNA into closer alignment with the RMA, the NPS-IB and regional-level directives. This being of course to the extent that that exercise proved feasible, given the constraints that we alluded to in paragraph 2.50 and associated with working within and to higher-level direction that is sufficiently settled and where the amendments concerned would not second-guess the outcomes of groundwork and community engagement required to support the necessary Schedule 1 RMA process to give full effect to that direction.
- 2.86 On this matter, we agree with Mr Horrell's view that the giving of full effect to the NPS-IB and development of methods for achieving maintenance of indigenous biodiversity throughout the Wairarapa are most appropriately considered as a full package rather than in isolation.
- 2.87 As Mr Horrell also usefully observed, the NPS-IB establishes that, in the giving of effect to it, certain procedural principles must be followed, including transparency and quality parameters regarding the gathering of information, partnering with tangata whenua, and engaging with landowners, people and communities<sup>56</sup>.
- 2.88 This strongly suggests to us that the Councils' need to bring the broader community with them to develop a comprehensive approach to fully implementing the NPS-IB and that that can only occur with reference to a Schedule 1 RMA process, beyond a certain point where options for adjusting the interim framework within the PDP have been practically exhausted.
- 2.89 It is our view that that point has been reached with respect to the final set of amendments recommended by Reporting Officers in relation to non-SNA values. To be clear then, we accept and adopt the recommendations and associated s32AA reasoning of Reporting Officers to amend Policy ECO-P8 summarised in paragraph 2.86b. above, and not also the additional amendments to PDP provisions requested by Forest and Bird as referred to in paragraph 2.87 above.
- 2.90 As we have stressed both here and in the Index Report<sup>57</sup>, the time that the Councils have at their disposal to give full effect to the NPS-IB by way of a Schedule 1 RMA process may at first glance seem generous, but the mahi involved is not to be underestimated. We would encourage the Councils to allocate the necessary funding and develop a detailed programme for the Schedule 1 RMA exercise at the earliest opportunity.

### ***Renewable electricity generation and electricity transmission activities***

- 2.91 The third issue we need to resolve is the extent to which the ECO provisions should exempt the development, operation, maintenance, or upgrade of renewable electricity generation activities or electricity transmission activities.
- 2.92 This is another matter which harks back to higher order directives and, specifically in this case, the relationship between the NPS-IB, the NPS-REG and the NPS-ET.

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<sup>56</sup> NPS-IB clauses 3.2, 3.3 and 3.8

<sup>57</sup> Para 2.36 of the Index Report

Notably, clause 1.3(3) in the NPS-IB states that:

*"Nothing in this National Policy Statement applies to the development, operation, maintenance or upgrade of renewable electricity generation assets and activities and electricity transmission network assets and activities. For the avoidance of doubt, renewable electricity generation assets and activities, and electricity transmission network assets and activities, are not "specified infrastructure" for the purposes of this National Policy Statement."*

- 2.93 The matter arose in submissions from Genesis Energy, Meridian Energy and Transpower, concerned with the degree of (mis)alignment between the PDP ECO chapter provisions and the above directive in the NPS-IB; essentially, the ECO chapter provisions neglected to carve out appropriate exemptions in relation to the activities concerned. This matter straddles the line between this report topic and the Energy and Network Utilities topics. Accordingly, our evaluation here should be read in conjunction with the corresponding sections in Decision Report 7.
- 2.94 In her s42A Report, Ms Wheatley recommended some amendments to Policies ECO-P7 and ECO-P8 and Rules ECO-R1 and ECO-R2 to reduce potential barriers to consent for the modification of indigenous vegetation where it related to the functional or operational needs of infrastructure activities (notably activities/facilities associated with electricity transmission and renewable energy regeneration).
- 2.95 Having then considered the pre-circulated evidence of Mr Matthews for Genesis Energy, Ms Foster for Meridian Energy, and Ms MacLeod for Transpower, Ms Wheatley recommended some additional amendments to better align Policies ECO-P5 and ECO-P8 with the clause 1.3(3) exemptions for renewable electricity generation and electricity transmission network activities and the enabling tenor of the NPS-REG and NPS-ET<sup>58</sup>.
- 2.96 She also recommended the insertion of new policies into the PDP to manage the effects of renewable electricity generation and electricity transmission activities on the natural values protected by overlay chapters (including the ECO chapter). She suggested that these policies could either be inserted into the overlay chapters, or the Energy and Network Utilities chapters and signalled her interest in working with the planning witnesses for Meridian Energy, and Transpower to develop the specific wording of these provisions and determine where they should sit in the PDP<sup>59</sup>.
- 2.97 Consequentially, we directed expert conferencing between Reporting Officers, the planning witnesses for the network utility operators and additionally those for GWRC and DoC, on how best to recognise the exemptions within the NPS-IB for renewable energy generation and electricity transmission assets and activities occurring within SNAs, and their relationship to Policies ECO-P4 and ECO-P6. Welcoming Ms Wheatley's offer, we also directed expert conferencing on a policy or policies for electricity transmission activities within the natural environment overlays.
- 2.98 We asked the conferencing experts to advise what the most appropriate policies are to recognise the exemptions for renewable electricity generation activities and electricity transmission activities in the NPS-IB (and noting potential interactions with

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<sup>58</sup> para 76, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

<sup>59</sup> para 41, Officer's Hearing Introduction Summary Statement – Ecosystems and Indigenous Biodiversity

policies ECO-P4 and ECO-P6). We noted also that proposed RPS Change 1 includes a new policy (24D) on this matter which might provide a useful starting point.

- 2.99 We subsequently received a joint witness statement (JWS) from planning witnesses for various parties to Hearings 6 and 7 dated 17 March amongst other documents included in the Councils' reply statement and bundle for Hearing 7.
- 2.100 Notwithstanding that we asked the experts to consider both renewable electricity generation *and* electricity transmission activities, the experts unilaterally decided that discussions should be focused on the former only and their relationship with relevant provisions in the ECO chapter. The experts further noted that:
- a. the Panel previously directed conferencing between the Council and Transpower in Minute 18 on the possibility of producing bespoke National Grid provisions relating to all district-wide chapters; and
  - b. that separate process may be the appropriate forum to address the Panel's directions summarised above as relates to electricity transmission.
- 2.101 Notably, the conferencing experts agreed to the inclusion of a new policy – 'ECO-PX' – which addresses renewable electricity generation activities within significant natural areas or significant habitats of indigenous fauna, and to consequential amendments to other relevant provisions.
- 2.102 Having considered the JWS and the subsequent reasons and s32AA evaluation provided by Mr Wesley who had assumed reporting responsibility from Ms Wheatly in his reply statement on the Energy Topic<sup>60</sup>, the Panel is satisfied that the recommended policy of the conferencing experts provides appropriate direction to implement the relevant higher order direction from both the NPS-IB and the NPS-REG. There were, however, three related matters arising from the conferencing which we need to address in further detail.
- 2.103 Firstly, the JWS provided a placeholder for a reference to two appendices that detail the principles for applying biodiversity offsetting and biodiversity compensation in both the ECO-PX and the associated definitions. It was apparent that all participants of the JWS agreed that those principles should reflect the same principles that are specified in Appendices 3 and 4 of the National Policy Statement for Indigenous Biodiversity 2023. However, the JWS indicated two options for the Panel's consideration to achieve this<sup>61</sup>, being either:
- a. Provide a direct cross reference to Appendices 3 and 4 of the NPS-IB in the definitions and ECO-PX<sup>62</sup>; or
  - b. Embed those principles into the PDP by preparing two new Appendices that reflect the NPS-IB<sup>63</sup> and subsequent changes to the definitions and ECO-PX to reference those Appendices.
- 2.104 The Panel adopt the first option to provide the direct cross reference as we consider it is more efficient and avoids any confusion for plan users as to where those

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<sup>60</sup> Officer's Reply Statement Energy Topic, para 36-41

<sup>61</sup> Paragraphs 14 – 19 of the JWS.

<sup>62</sup> Clause (c).

<sup>63</sup> A note was also recommended to clarify how Table 17 and Appendix 1A of Plan Change 1 to the Regional Policy Statement relates.

principles have been derived.

- 2.105 Secondly, the Panel observed an apparent lack of consistency in terminology used for describing areas and resources of relevance to the ECO chapter. We sought assistance from the parties on this matter at the integration hearing and it is addressed further. Those matters were resolved to our satisfaction during the integration hearing courtesy of drafting recommendations from Ms Fallowfield who had more recently assumed reporting responsibility from Ms Wheatly and Mr Wesney. In summary those refinements include:
- a. Whole of plan: Amend any reference to 'Functional need and operational need' to 'Functional or operational need'
  - b. ECO chapter: Address lack of consistency in the terminology used to describe areas and resources of relevance to indigenous biodiversity.
- 2.106 Thirdly, experts who participated in the conferencing on this matter for GWRC and DOC – Ms Bangi and Ms Schipper – also sought directions in the JWS from the Panel to: enable participation by those experts in the separate conferencing the Panel had directed in Minute 18; and set out a process for additional provisions to be prepared to address a gap identified by Ms Bangi and Ms Schipper in conferencing regarding Energy and Indigenous Biodiversity matters.
- 2.107 Upon receiving the JWS, the Panel issued preliminary directions on 21 March 2025 as follows:

*5. Prior to responding to the direction sought by the JWS parties, the Hearing Panel has identified particular matters relating to the scope for any consequential amendments (particularly new rules/standards) arising from proposed new Policy ECO-PX; noting this new policy is already a consequential amendment arising from submissions on notified policies in the PDP. The Hearings Panel notes several parties made submissions on the policies and rules in the ECO Chapter in the PDP, and any consequential amendments arising from this proposed new policy may raise fairness and natural justice issues for those parties not involved in the formulation of any consequential new rules/standards to give effect to proposed new Policy ECO-PX.*

### ***Direction***

- 6. In this context and before committing the JWS parties to the time and cost associated with the further expert evaluation (e.g. ecological and planning conferencing mentioned in the JWS), the Hearing Panel needs to be certain there is scope for these additional consequential amendments (rules and/or standards) arising from new Policy ECO-PX. The Panel requests that:*
- 1. Greater Wellington Regional Council and the Director General of Conservation to outline in detail the scope for the additional consequential amendments arising from new Policy ECO-PX.*
  - 2. Any of the parties involved in the recently completed conferencing to respond (either individually or preferably collectively) to the natural justice and fairness issue raised in paragraph 5 above.*
- [footnote omitted]

- 2.108 We subsequently received various documents in response to the above. Firstly, we received legal advice from DLA Piper on behalf of GWRC providing analysis of scope.

Their opinion is that sufficient scope is available to include consequential provisions but any questions as to natural justice or fairness would be a matter for the Panel. That advice was supported by Ms Katherine Anton on behalf of DOC.

- 2.109 Included in the response bundle from DOC and GWRC was a supplementary statement of evidence from Ms Bangi and Ms Schipper, which recommended amendments to rule provisions to implement the new policy ECO-PX.
- 2.110 Mr Andrew Feierabend, on behalf of Genesis Energy and Meridian Energy, also provided a brief response to the Panel to express concerns as to fairness and natural justice with additional provisions being applied.
- 2.111 Mr Horrell and Mr Wesney accepted the legal advice from DLA Piper, but shared Mr Feierabend's view that the new provisions sought by GWRC and DOC raise matters of fairness and natural justice. In their view, the amendments sought in the respective submissions of these parties are materially different to the changes sought in the supplementary statement prepared by Ms Bangi and Ms Schipper.<sup>64</sup>
- 2.112 We subsequently invited the Councils and other relevant submitters to comment on the substance of the amendments proposed by Ms Bangi and Ms Schipper. The only response we received was from Mr Wesney, as follows:
- a. Mr Wesney supported the other experts' recommended amendments of the term 'indigenous vegetation' with 'indigenous biodiversity' in various matters of control/discretion, though he noted this would be subject to recommendations by others at the integration hearing;
  - b. on the understanding that effects on significant natural areas and significant effects on all other indigenous biodiversity should be considered where consent is required under Rule ENG-R3(3), he supported the additions to the matters of discretion as proposed by Ms Bangi and Ms Schipper; and
  - c. Mr Wesney did not consider there to be sufficient evidence to support the vegetation clearance limit proposed by Ms Bangi and Ms Schipper, though in acknowledging 'somewhat of a gap' in that regard, a more appropriate solution to address potential effects of community scale renewable generation activities on indigenous biodiversity, in Mr Wesney's view, would be to cross reference standard ECO-S1 under energy rules ENG-R4 and ENG-R5.<sup>65</sup>
- 2.113 In addressing this matter, we firstly acknowledge the efforts of many to assist us across multiple hearing streams, joint witness conferences and through responses to multiple minutes issued by us. This was one of the more involved and nuanced integration matters for the Panel to address.
- 2.114 Having carefully considered the matter, we are only prepared to adopt the minor terminology changes as confirmed in the integration hearing (and summarised above) in response to the recommendations of Ms Bangi and Ms Schipper. This is due to reasons both of fairness and appropriateness.
- 2.115 In terms of procedural fairness, we are firstly hesitant to adopt limits on vegetation

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<sup>64</sup> Officer's Supplementary Reply Statement Ecosystems and Biodiversity Topic, para 7-8

<sup>65</sup> Officer's Second Supplementary Reply Statement Ecosystems and Biodiversity Topic, para 4-8

clearance that do not appear to be well-founded in evidence, nor supported by compelling s32AA analysis from Ms Bangi and Ms Schipper. We are grateful to Mr Wesney for his alternative suggestion and his efforts to provide us with sound planning rationale to address the 'gap' identified by Ms Bangi – however, that does not overcome our hesitancy to act in this case. The lack of clear evidential rigor points to a need for more considered examination of options and alternatives, including opportunities for all potentially affected persons to test those. In our view, this is better managed through future Schedule 1 RMA process.

- 2.116 We also record our discomfort with the focus of the amendments from Ms Bangi and Ms Schipper being related to community scale renewable electricity generation facilities, when the focus of ECO-PX is clearly solely directed towards larger scale energy proposals. We note in particular – under clause a.ii of the policy – that the direction is only relevant where a proposal is 'nationally or regionally significant'. By definition, we cannot reconcile that such a classification could extend to community-scale projects. This raises the question as to whether the further amendments recommended by Ms Bangi and Ms Schipper can be fairly said to implement ECO-PX as a consequential change arising from the joint witness conferencing that generated that proposed policy.
- 2.117 Putting those matters to one side and addressing the 'gap' left by our decision not to act in this case, we record that the risks that significant effects on indigenous biodiversity arising are low in our view. This is principally owing to the following factors:
- a. the controlled activity rules under ENG-R4 and ENG-R5 do not apply where a community scale solar facility or wind facility (respectively) are located within any SNA – such proposals would be assessed as fully discretionary activities and any impacts on indigenous biodiversity would be open for decision-makers to consider;
  - b. notwithstanding that RPS Change 1 remains under appeal, we do not consider any measures to address the so-called gap are needed to implement the relevant direction in the RPS and Change 1 decisions versions – this reflects in particular the general alignment of ECO-PX and Policy 24D in Change 1;
  - c. both under RPS Change 1 and the NPS-REG we are to enable small and community scale renewable energy generation, and there is no direction in the suite of Policy 24 – Policy 24D provisions in Change 1 that suggest limits need be imposed where community scale generation facilities are proposed *outside* SNAs but may involve modification to other indigenous vegetation;
  - d. related to the previous point, Policy 24 sub-clause (c) of RPS Change 1 clarifies that the renewable generation activities are not subject to Policies 24A and 24B, and the nexus between such activities and significant indigenous biodiversity values is managed by Policy 24D; and
  - e. there are appropriate matters of control and discretion in rules ENG-R4 and ENG-R5, in combination with the limits as to the scale of proposed community scale solar and wind facilities in the ENG chapter standards, that will ensure effects on indigenous biodiversity are considered alongside other potentially relevant factors – including the benefits to be derived from the generation facility.

- 2.118 In the absence of compelling evidence and/or clear policy direction from higher order statutory instruments requiring otherwise, we consider the most efficient and effective solution is to discount Ms Bangi and Ms Schipper's substantive changes recommended in their joint statement.

***Give effect to the NZCPS and RPS (inclusive of Proposed Change 1) where the protection of indigenous biodiversity in the Coastal Environment is concerned***

- 2.119 The fourth issue to resolve relates to how the PDP gives effect to the NZCPS and RPS (inclusive of Proposed Change 1) direction within the coastal environment. Specifically, the direction provided through Policy 11 of the NZCPS and the similar direction provided in Policy 24C of the RPS Change 1. This direction requires the protection of indigenous biodiversity in the Coastal Environment.
- 2.120 This matter relates principally to Policy CE-P4 and the extent to which clause (b)(vi) implements the requirements of Policy 11 of the NZCPS and Policy 24C of the RPS Change 1. A difference of opinion was expressed between Director General of Conservation<sup>66</sup> and the Reporting Officer<sup>67</sup> (Ms. Wheatley).
- 2.121 While this matter relates to a provision in the Ecosystem and Indigenous Biodiversity Topic, we consider it is more appropriately considered amongst other related matters in the deliberations on the Coastal Environment Topic. Consideration of this matter has therefore been provided in Paragraphs 3.85 – 3.97.

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<sup>66</sup> Statement of Evidence of Christina Schipper on behalf of Director-General of Conservation, para 126-133, dated 2<sup>nd</sup> December 2024

<sup>67</sup> Para 141, Officer s42A Report, Coastal Environment

### 3 Coastal Environment Chapter

#### Outline of matters addressed in this section

- 3.0 The Coastal Environment (CE) Chapter represents the PDP's approach to integrated management applying an activity-based approach to the range of issues which relates to coastal environment that extends landward from the Mean High-Water Springs (MHWS).
- 3.1 In terms of the CE Chapter, this section of our Decision Report:
- a. addresses a number of overarching and inter-related issues relating to the application of the higher order policy framework, and specifically the New Zealand Coastal Policy Statement
  - b. provides a summary of the relevant notified provisions;
  - c. provides a brief overview of submissions received on the provisions;
  - d. provides a summary of the recommended amendments that the Panel adopts; and
  - e. evaluates and sets out our decisions on the key issues remaining in contention; which we have grouped into the three categories:
    - i. *The extent of the Coastal Environment and Foreshore Protection Area overlays*
    - ii. *Subdivision and the interaction between the Coastal Environment and Settlement Zone*
    - iii. *General Matters relating to the provisions of the Coastal Environment Overlay (Objectives and policies re: NZCPS and specific rules and standards)*

#### Higher order policy framework

- 3.2 The following higher order documents are a relevant consideration to the evaluation of matters in relation to the Coastal Environment Chapter.

#### *Section 6 (a) of RMA*

- 3.3 Section 6(a) of the RMA directs Councils to recognise and provide for "the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development" as a matter of national importance.

#### *NZCPS*

- 3.4 The NZCPS requires a strategic approach to managing development on the coast, in addition to Policy 11, 15, 18 and 19 in relation to the management of indigenous biodiversity, natural features and landscapes, and public access as they respectively relate to the coastal environment.

- 3.5 In accordance with the requirements of the National Planning Standards, these issues are managed in the Coastal Environment Chapter in addition with the Ecosystems and Indigenous Biodiversity, Natural Feature and Landscapes, and Public Access chapters respectively.

***The Operative RPS and Proposed Change 1 to the RPS***

- 3.6 The RPS and PC1 to the RPS contain directions relating to the coastal environment that align with and give effect to both the NZCPS and the RMA.
- 3.7 The operative RPS seeks to protect the indigenous biodiversity values, use and development within the coastal environments by avoiding adverse effects on indigenous biodiversity values that meet the criteria in Policy 11 of the New Zealand Coastal Policy Statement.
- 3.8 The policy direction focus contained in Proposed Change 1 relevant to the Coastal Environment topic has shifted towards the management of effects of development on the coastal environment, resilience to climate change and natural hazards, and protecting coastal environment values.

***Strategic Direction Objectives***

- 3.9 The PDP also includes Strategic Direction Objectives relating to ecosystems and indigenous biodiversity within the Natural Environment section that the corresponding provisions of each chapter in the PDP must align with. The relevant Strategic Direction Objectives for the Coastal Environment Chapter are:
- a. CCR-02: Adapting to climate change
  - b. CCR-03: Resilience to Natural Hazards
  - c. NE-01: Natural character, landscapes, features, and ecosystems
  - d. NE-02: Wairarapa Moana
  - e. NE-04: Coastal Environment
  - f. NE-05: Integrated management
  - g. NE-06: Healthy ecosystems
  - h. TW-04: Kaitiakitanga
  - i. UFD-01: Urban form of the Wairarapa
- 3.10 Therefore, the CE Chapter needs to align and deliver the above Strategic Objectives through the chapter provisions, particularly the overarching Coastal Environment Strategic Objective NE-04, to ensure that the special qualities of the coastal environment are recognised and protected whilst ensuring it also assists in delivering the other objectives listed above.
- 3.11 Therefore, our observations and findings in relation to the application of Section 6(a) of the RMA, the NZCPS, Operative RPS and Proposed Change 1 to the RPS and Strategic Objectives all form a reference point for our consideration of contested matters in the final part of this section of this Decision Report.

### **Summary of the relevant notified provisions**

- 3.12 The PDP Coastal Environment chapter takes an activity-based approach, as opposed to the effects-based approach, to the coastal environment than that of the ODP.
- 3.13 The introductory section of the CE chapter, as notified, details the spatial extent of the CE. It also explains that there are other spatial elements included within the coastal environment, such as areas of outstanding natural character and very high and high natural character, Significant Natural Areas, Outstanding Natural Features and Landscapes and Special Amenity Landscapes, which are addressed through the Ecosystems and Indigenous Biodiversity and Natural Features and Landscape chapters. There are four Plan map overlays and two schedules that give effect to the provisions of Coastal Environment chapter:
- a. Coastal Environment overlay
  - b. Schedule 9: Outstanding Natural Character Areas and map overlay
  - c. Schedule 10: High and Very High Natural Character areas and map overlay
  - d. Foreshore Protection Area: Provides a setback for development from potential coastal hazards and protects the natural character and ecology of the foreshore from the adverse effects of development.
- 3.14 The CE Chapter contains five objectives which: set out the qualities of the coastal environment (CE-01), how the coastal natural character is preserved (CE-02), how the risks from coastal hazards are managed (CE-03), recognises Tangata Whenua values (CE-04) and how activities are managed (CE-05).
- 3.15 The nine policy framework (Policies CE-P1-P9) supporting the objectives seek to:
- a. Identify the extent of the coastal environment
  - b. Avoid adverse effects of subdivision, use and development on the Outstanding Natural Character Areas
  - c. Manage subdivision, use and development within Very High and High Natural Character Areas
  - d. Ensure that there is a functional or operational need for activities and subdivision to be located within the coastal environment
  - e. Manage residential activities within the coastal environment
  - f. Provide for maintenance, repair, and removal of existing infrastructure and manage appropriate new infrastructure within the Very High and High Natural Character areas
  - g. Recognise and manage adverse effects on coastal archaeology
  - h. Adopt an precautionary approach to subdivision, use and development from risks of coastal hazards by identifying the Foreshore Protection Area
  - i. Encourage soft engineering solutions within the Foreshore Protection Area

- 3.16 The corresponding rules and standard framework provide for the following activities within the following spatial extents as permitted activities and where standards are not achieved, they are provided for as restricted discretionary activities:
- a. CE-R1: Earthworks or buildings and structures in the *Coastal Environment*
  - b. CE-R2: Earthworks or buildings and structures within Areas of Very High and High Natural Character
  - c. CE-R3: Earthworks, modification of vegetation, or buildings and structures within Areas of Outstanding Natural Character
- 3.17 The following activities are non-complying activities:
- a. CE-R4: Plantation forestry within area identified as Outstanding Natural Character and Very High and High Natural Character.
  - b. CE-R5: New residential activity within the Foreshore Protection Area
  - c. CE-R6: Earthworks, modification of indigenous vegetation, or buildings and structures (including construction, additions, and alterations) not otherwise listed in this chapter
- 3.18 The three corresponding standards relate to earthworks, modification of indigenous vegetation and buildings and structures.

### Overview of submissions

- 3.19 A total of 134 submission points and 82 further submission points were received on the Coastal Environment topic, as set out in further detail in the s42A Report.<sup>68</sup>
- 3.20 Submitters were generally supportive of the overall provisions of the CE Chapter but sought an increase in alignment with the NZCPS and further clarification for specific activities.<sup>69</sup>
- 3.21 The greatest number of submissions related to the proposed policies, with a total of 46 submission points and 26 further submission points received.
- 3.22 We focus on the key areas in contention as listed i-iii. above under para 3.2 e.
- 3.23 For efficiency, those submission points where the Reporting Officers recommended changes that were generally not contested during the course of the hearing; we adopt the recommendations and make no further evaluation on these, which we set out in the proceeding section below.

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<sup>68</sup> para 54-57, Officer's Section 42A Report – Coastal Environment, 18 November 2024

<sup>69</sup> para 6, Officer's Section 42A Report – Ecosystems and Indigenous Biodiversity, 18 November 2024

### Recommended amendments that the Panel adopts

- 3.24 There are two scenarios in which recommended changes were made by Reporting Officers prior to the hearing:
- a. Initial recommended changes to the notified provisions based solely on matters raised in submissions or further submissions and set out in the **Officers' s42A Report**; or
  - b. Further changes to the notified provision or to the changes set out in **a.** as a result of pre-circulated evidence from submitters and set out in the **Officers' Summary Statement**.
- 3.25 The Panel has carefully considered the recommendations made at **a.** and **b.**
- 3.26 Where we were satisfied that the recommended changes made in **a.** and **b.** above addressed submitters concerns and were no longer actively contested by the time of the hearing, we have adopted those changes and their accompanying reasoning and s32AA evaluations and – where relevant – the evidence of others the Officers have relied upon and make no further evaluation on these.
- 3.27 As a result, we have accepted and adopted the following amendments below:
- a. Amend the **introduction** to clarify the relationship of Coastal Environment provisions with the NZCPS and clarifying the purpose of the Foreshore Protection Area.<sup>70</sup>
  - b. Amend **CE-O2** for alignment with Section 6 of the RMA, Objective 2 and Policy 13 of the NZCPS, and Objective 4 and Policy 3 of the Wellington RPS.<sup>71</sup>
  - c. Amend **CE-O3** and **CE-O4** to encourage the reduction of risk from natural hazards and provide for tangata whenua involvement in managing the coastal environment in response to submissions from Toka Tū Ake EQC and East Leigh.<sup>72</sup>
  - d. Amend **CE-P1, CE-P2, CE-P3, CE-P4, and CE-P6** to align with Higher Order Documents and to encourage protection of areas of natural character, clarify the purpose of the Foreshore Protection Area, and enable minor upgrading of existing infrastructure.<sup>73</sup>
  - e. Amend **CE-P4**, clause (x) to include the words 'reduced or' in respect to the risk to other people, properties and activities in relation to coastal hazards, in response to submission from Toka Tū Ake EQC and further submission in

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<sup>70</sup>Including the reasons set out in para 280-284, Officer's Section 42A Report – Coastal Environment, 18 November 2024 and the s32AA evaluation at paras 287-290.

<sup>71</sup>Including the reasons set out in para 29 and 33, Officers Summary Statement – Coastal Environment, relying on the Evidence of Evidence of Christine Foster – Hearing Stream 6 – Overlays Part 2 (2 December 2024), paras 3.1-3.8

<sup>72</sup>Including the reasons set out in para 87, Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 97-100.

<sup>73</sup>Including the reasons set out in para 123 Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 180-183 and Paras 24, 26, 29, 34 and 35 Officers Summary Statement – Coastal Environment, including evidence of Christine Foster – Hearing Stream 6 – Overlays Part 2 (2 December 2024), paras 4.1-4.2, 5.1-5.6 and 6.1-6.3

supported by GWRC<sup>74</sup> set out in the s42A Report and further amendments to **CE-P4** and clause (a) in response to pre-circulated evidence<sup>75</sup>

- f. Amend **CE-R1** matter of discretion as a minor correction<sup>76</sup>
  - g. Amend **CE-R2** and **CE-R3** to clarify the activity status of activities, clarify matters of discretion and enable network utility poles up to 8m in height in light of submission<sup>77</sup>
  - h. Delete **CE-R6** as a consequence of the changes set to rules CE-R1, CE-R2, CE-R3.<sup>78</sup>
  - i. To add **CE-RX** to make any earthworks, modification of indigenous vegetation or buildings and structures (including construction) for the development of the National Grad within any area of Outstanding, Very High, and High Natural Character a discretionary activity.<sup>79</sup>
  - j. Amend matters of discretion in Standards **CE-S1, CE-S2, and CE-S3** to consider coastal indigenous biodiversity matters to align with Policy 11 of the NZCPS<sup>80</sup> and **CE-S3** to enable network utility poles up to 8m in height.<sup>81</sup>
- 3.28 With respect to Policy CE-P4: Activities and subdivision within the coastal environment, there were further aspects of the policies that remained in contention and our evaluation are set out below in paragraphs 3.85-3.96.
- 3.29 Full details of the recommended amendments and the rationale and corresponding s32AA evaluation for the above changes that we have adopted are set out in Section 6 of the s42A Report<sup>82</sup> and additionally, and in relation to pre-circulated evidence, in Section 4 of Ms Wheatley's Summary Statement.

### Decisions on key issues remaining in contention

- 3.30 We now turn to our evaluation of the key matters still remaining in contention during prior to and/or during the course of the hearing, which we set out below in more detail on the following:

*a. The extent of the Coastal Environment and Foreshore Protection Area overlays*

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<sup>74</sup>Including the reasons set out in para 135, Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 180--183.

<sup>75</sup>Evidence of Christine Foster – Hearing Stream 6 – Overlays Part 2 (2 December 2024), paras 5.1-5.6

<sup>76</sup>Including the reasons set out in para 188-191, Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 216-219, paras 37-38 Officers Summary Statement – Coastal Environment

<sup>77</sup> Including the reasons set out in paras 193-196 and 198-203, Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 216-219, paras 37-38 and 41 Officers Summary Statement – Coastal Environment

<sup>78</sup>Including the reasons set out in paras 208-211, Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 216-219

<sup>79</sup> Including the reasons set out in para 31-38, Officers Summary Statement – Coastal Environment

<sup>80</sup>Including the reasons set out in para 28, Officers Summary Statement – Coastal Environment

<sup>81</sup> Including the reasons set out in para 243 Officer's Section 42A Report – Coastal Environment, 18 November 2024 the s32AA evaluation at paras 247-250

<sup>82</sup> Section 6, Officer's Section 42A Report – Coastal Environment and Section 4, Summary Statement – Coastal Environment

- b. *Subdivision and the interaction between the Coastal Environment and Settlement Zone*
- c. *General Matters relating to the provisions of the Coastal Environment Overlay*

***The extent of the Coastal Environment and Foreshore Protection Area overlays***

- 3.31 A total of nine submission points and six further submission points were received on the Coastal Environment and Foreshore Protection Area overlays.
- 3.32 For context, we reiterate the relevant overlays within the Coastal Environment are:
  - a. Coastal Environment overlay
  - b. Schedule 9: Outstanding Natural Character Areas and map overlay
  - c. Schedule 10: High and Very High Natural Character areas and map overlay
  - d. Foreshore Protection Area overlay
- 3.33 We set out our evaluation for each of the relevance overlays in turn below.

*Coastal Environment overlay*

- 3.34 In relation to the Coastal Environment Overlay, as notified, the Riversdale Beach settlement area was covered by the Coastal Environment Overlay which is applied 'over the top' of the Settlement Zone.
- 3.35 There were three submissions received in respect to the Coastal Environment Overlay at Riversdale,<sup>83</sup> one in support of the spatial extent and two seeking amendments to the overlay. There was one further submission in opposition to the submission seeking amendments.<sup>84</sup>
- 3.36 The submitters in opposition to the Coastal Environment Overlay generally sought that the extent of the Coastal Environment excludes the Settlement Zone and only coincide with the Foreshore Protection Area and considers the overlay inconsistent with Policy 4 of the RPS.
- 3.37 Initially, the reporting officer, Ms. Wheatley considered that the 2020 Wairarapa Coastal Study, which was the basis of defining the spatial extent of the coastal environment, used a robust, regionally adopted method that aligned with both the NZCPS and RPS. The study identified inland boundaries that incorporated the extent where significant coastal influences are recognised and can include "physical resources and built facilities, including infrastructure, that have modified the coastal environment." Therefore, Ms. Wheatley considered it both appropriate and consistent with the higher order policies that the areas of the Settlement Zone where identified within the coastal environment, are included within the Coastal Environment Overlay and rejected the relief sought by submitters.<sup>85</sup>

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<sup>83</sup>\$28.005, \$210.001 and \$239.048

<sup>84</sup>F55.001

<sup>85</sup> Para 297, Officer's Section 42A Report – Coastal Environment

- 3.38 East Leigh provided planning, legal and landscape evidence with regards to this matter and where of the opinion that the extent of genuine coastal influence (the coastal environment) ceases beyond the top of the coastal escarpment along the western edge of the original Riversdale Beach settlement and therefore the inland boundary of the Coastal Environment Overlay should be reduced accordingly.<sup>86</sup>
- 3.39 However, in response to the submitters evidence, Council's Landscape Planner concluded that, the inland extent of the coastal environment has been defined through a robust methodology that has included inputs from expert landscape architects, ecologists, and coastal scientists and therefore the location as proposed should be upheld. On this basis, at the hearing, Ms. Wheatley retained her s42A position and did not recommend any change to the Coastal Environment mapping at Riversdale Beach.
- 3.40 We heard from Ms. Foster at the hearing in relation to this, setting out the rationale of East Leigh's involvement in the hearing was due to its developed land at Riversdale Terraces being zoned General Rural, and seeks rezoning to Settlement and Natural Open Space to align with actuality. Whilst Ms. Foster was encouraged by Ms. Wheatley's potential support of rezoning to be dealt with through the substantive rezoning hearing, until such time as the zoning matter is resolved, East Leigh continue to engage in discussions relating to all relevant notified planning provisions applying to Riversdale.<sup>87</sup>
- 3.41 To assist the Panel during site visits after the hearing, they requested Ms McRae (Landscape Planner at Boffa Miskell for the Councils) provide representative sites for the Panel to gain further understanding of the context and extent of the Coastal Environment and two specific sites on East Leigh's property (northern terrace, currently unbuilt but consented), plus go to the corner of Tama and Knoyle Roads. Site visits were undertaken by the Panel on 27<sup>th</sup> February 2025.
- 3.42 However, in response to evidence presented at the hearing, Ms. Wheatley did not recommend any changes to the spatial extent of the Coastal Environment in her Reply Statement.
- 3.43 During the site visit, the Panel tested the five criteria<sup>88</sup> used in the Wairarapa Coastal Study to identify the inland extent of the Coastal Environment of both the notified extent and the amended extent sought by East Leigh, along with factors set out in the NZCPS in terms of determining the extent of the coastal environment.
- 3.44 Ultimately, as a result of the site visits and on balance of all evidence presented, the Panel favour the Landscape evidence of the submitter, Mr. Hudson, specially that a determining factor of the extent of the coastal environment is 'where coastal processes, influences or qualities are significant' and as notified, that the Panel considers that the inland extent of the coastal environment as sought by East Leigh is more accurately aligned with criteria than the inland boundary as notified.<sup>89</sup>
- 3.45 Whilst the Panel acknowledge East Leigh's preference to resolve the zoning matter is

<sup>86</sup> Para 5.7, Statement of Planning Evidence of Christine Foster on behalf of East Leigh, dated 2 December 2024

<sup>87</sup> Para 1.2, Speaking notes of Christine Foster on behalf of East Leigh, dated 16 December 2024

<sup>88</sup> Criteria 'Image 1' as provided for within Summary Statement of Evidence by Emma McCrae on Coastal Environment, dated 16-17 December 2024

<sup>89</sup> Statement of Landscape Evidence of John Hudson on behalf of East Leigh, dated 2 December 2025

the priority issue, and if their rezoning request is resolved, it may in turn resolve their concern with the Coastal Environment Overlay, it is important for the Panel to make a determination on this matter in principle irrespective of the underlying zoning.

- 3.46 Therefore, this matter should also be read in conjunction with **Decision Report 11** in respect of the rezoning requests of East Leigh.

### ***S32AA Evaluation***

- 3.47 The Panel considers that the amended boundary of the Coastal Environmental overlay more effectively and efficiently manages the area where coastal processes, influences and qualities are '*significant*' and not just '*present*'.
- 3.48 In terms of the risks of acting vs not acting, the Panel considers that given the majority of the area covered by the Coastal Environment Overlay that corresponds to the Riversdale Beach settlement is already largely developed and underlying zoning of the area that falls between the notified inland boundary and the boundary sought by the submitter is provided for in terms of protected from inappropriate use and development through the underlying zoning provisions.
- 3.49 The reduction of the extent of the Coastal Environment Overlay will reduce consenting costs to landowners and only apply to the areas where coastal environment is 'significant'.

### ***Schedule 9: Outstanding Natural Character Overlay and Schedule 10: Very High and High Natural Character Overlay***

- 3.50 The proposed plan introduced two new overlays, Schedule 9 and 10 with associated provisions that limit land use, development and subdivision to protect their values and their spatial extents have been identified to ensure protection under Policy 13 of the NZCPS and Policy 24 of the Wellington Regional Policy Statement.
- 3.51 There was one submitter seeking sites deleted from Schedule 9 where landowner agreement has not been reached, however there were further submissions in opposition to this.
- 3.52 Similarly, with respect to Very High and High Natural Character Overlay (Schedule 10), submitters sought minor corrections for boundaries and the removal of sites where landowner agreement had not been reached.
- 3.53 However, Ms. Wheatley concluded on both matters in her S42A Report that no landowners have opposed the areas of Outstanding Natural Character and therefore did not recommend any deletions from Schedule 9 or 10.<sup>90</sup> In respect of the submitter seeking boundary adjustments, Ms. Wheatley notes that physical boundaries of the natural character area does not account for surveyed land boundaries and that as no titles are listed in Schedule 10, no corrections to the schedule are required.
- 3.54 There was no evidence presented to challenge this matter at the hearing and therefore the Panel accepts and adopts the recommendation of Ms. Wheatley that no further amendments are required.

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<sup>90</sup>Para 303, Officers Section 42A Report – Coastal Environment



### *Foreshore Protection Area*

- 3.55 The operative plan provides for a Foreshore Protection Area and the notified plan was essentially a roll-over of this provision, which restricts use and development in proximity to the coastline to manage coastal hazards and protect this sensitive environment but with the new provisions strengthening the requirement to avoid new development that would increase coastal hazard exposure and risk.
- 3.56 Two key submitters were opposed to the Foreshore Protection Area, firstly, EQC sought the overlay be renamed to "Coastal Hazards Area" and East Leigh seeking it be amended to better anticipate future sea level rise.<sup>91</sup>
- 3.57 Ms. Wheatley responded to these submission points in her s42A and concluded firstly on the EQC renaming request, stating that the overlay has a dual purpose and is not solely in relation to coastal hazards but also natural character and ecology and the renaming sought by EQC would not reflect the dual purpose of the overlay. However, she did concede an amendment to the Introduction of the chapter explaining the purpose of the Foreshore Protection Area would clarify this.
- 3.58 Secondly, in response to East Leigh submission, Ms. Wheatley reiterated that the inland boundary for the Foreshore Protection Area was a roll over from the ODP and was based on the most recent available information. As no further assessment was provided to the contrary by the submitter, Ms. Wheatley did not recommend any changes to the spatial extent of the Foreshore Protection Area.
- 3.59 To note, Ms. Foster, on behalf of East Leigh stated in her evidence that they would not be pursuing this matter any further<sup>92</sup> and therefore the Panel accepts and adopts Ms. Wheatley's recommendation to retain the overlay as notified.

### ***Subdivision and the interaction between the Coastal Environment and Settlement Zone***

- 3.60 There is one rule within the Subdivision Chapter that relates to the Coastal Environment (SUB-R12). As notified, the activity status for subdivisions of all zones within the Coastal Environment was restricted discretionary, except where it did not meet the RDA criteria clauses (1)(a)-(c), whereby it comes a Non-complying activity. As notified, under clause (1)(b) subdivision with the Settlement Zone would trigger a non-complying consent.
- 3.61 Submissions received on this rule either sought retention<sup>93</sup> of the notified version or amendments<sup>94</sup> in the following aspects of the subdivision rule:
- a. Reduction in the allotment size*
  - b. Amendment to the activity status*
  - c. Amendments to the Matters of Discretion*

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<sup>91</sup> Para 298-301, Officers Section 42A Report – Coastal Environment

<sup>92</sup> Para 12.1, Statement of Planning Evidence by Christine Foster on behalf of East Leigh, dated 2 December 2024

<sup>93</sup> Toka Tū Ake EQC (S90.026) and Heritage NZ (S249.048)

<sup>94</sup> AdamsonShaw (S152.017, FS80.011), Scott Anstis (S233.015), Brian John McGuinness (FS86.056, FS86.057, FS86.059), East Leigh (S239.028), the Wairarapa District Councils (S251.003), and Adrian and Julie Denniston (FS23.001)

3.62 With respect to a.- c. above submitters sought the minimum lot size for subdivision in the Coastal Environment be amended from 40ha to 20ha, allow for subdivision of sites in Settlement Zones in accordance with activity status contained in the underlying zone, and an additional matter of discretion be added in relation the extent that subdivisions could strengthen isolated communities<sup>95</sup> or to add “ecological values” and “natural character”.<sup>96</sup>

3.63 The submissions in relation to Rule SUB-R12 remained in contention prior to and at the hearing, we address the matters of para 2.62 a.- c. in turn below:

*Reduction in the allotment size*

3.64 The submission from Adamson Shaw<sup>97</sup> sought the removal of the 40ha minimum lot size for subdivision in the coastal environment and seeking the rules applying to rural lifestyle subdivision in the coastal environment being the same of the underlying General Rural Zone.

3.65 The Panel notes that Ms. Wheatley agreed with this submission point and recommended the deletion Clause (1)(c) from rule SUB-R12 in her s42A Report.<sup>98</sup>

3.66 Furthermore, we acknowledge that Ms. Wheatley agreed with Ms. McWilliams pre-circulated evidence on behalf of Adamson Shaw supported the amendments made in the s42A Report and that all minimum lot sizes for subdivision in the coastal environment should default to those of the underlying zone. The Panel accepts and adopts this recommended change.

3.67 To be clear, this is simply an administrative arrangement to transfer the subdivision standards from the overlay rules to the underlying zone rules. It does not involve alterations to the minimum allotment sizes for subdivision in the underlying zone other than what has been determined in Decision Report 3 (Rural and Rural Lifestyle Zone).

*Amendment to the activity status*

3.68 The submission from Brian McGuinness<sup>99</sup> and evidence presented on behalf of Brian McGuinness sought that the activity status of (Rule SUB-R12(1)) be amended from a Restricted Discretionary to a Controlled activity in the Settlement Zone.

3.69 Ms. Wheatley did not recommend any change to activity status prior to the hearing, citing that areas where the underlying zone standards may not adequately protect values and characteristics is within areas of areas of High, Very High, and Outstanding Natural Character and the Foreshore Protection Area, which is reflected by the Non-complying activity status, with the full range of potential effects able to be assessed.<sup>100</sup>

3.70 However, the submitter continued to oppose the non-complying activity status in their evidence and sought that Controlled activity status for subdivision in the Settlement Zone, where the Coastal Environment Overlay applies.<sup>101</sup>

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<sup>95</sup> Federated Farmers (S214.082), The Director General of Conservation (S236.101), Forest and Bird (S258.205)

<sup>96</sup> Director General of Conservation (S236.101)

<sup>97</sup> S152

<sup>98</sup> Para 263, Officers s42A Report, Coastal Environment

<sup>99</sup> S226/FS86

<sup>100</sup> Para 262, Officer s42A Report, Coastal Environment

<sup>101</sup> Para 31, page 12, Statement of Planning Evidence of Deborah Donaldson on behalf of Mr McGuinness, dated 2 December 2024

- 3.71 Ms. Wheatley returned to this matter in her Hearing Statement and considered both controlled and restricted discretionary activity status and Hearing Statement concluding that a Restricted Discretionary activity is the most appropriate option as a Controlled activity status would not enable Councils to decline consent if the effects of the subdivision on the Coastal Environment were unacceptable.<sup>102</sup>
- 3.72 In relation to this matter, at the hearing, we asked what the most appropriate activity status for subdivision should be and if a Controlled Activity status is appropriate for subdivision within the Coastal Environment and what matters of control should be applied.<sup>103</sup>
- 3.73 The Panel further sought that Joint Witness Conferencing take place between the parties to confirm the appropriate activity status for subdivision within the Settlement Zone within the Coastal Environment Overlay.
- 3.74 As a result of the JWS, the following matters were clarified and further amendments agreed to as follows:
- a. The most appropriate activity status for subdivision within the Settlement Zone of the Coastal Environment is 'Controlled' on the basis of the evidence from a Landscape Planner in that land subject to Settlement Zone is already development / degraded and that localised effects associated with subdivision could be appropriately minimised and mitigated within the wider character and amenity context of the Settlement Zone. Subdivision within all other zones with the Coastal Environment is considered to retain the restricted discretionary activity status.
  - b. To clarify any conflict or overlap between the underlying subdivision zone rule for the Settlement Zone, additional wording was recommended to be added to the introductory text of the Subdivision Chapter.
- 3.75 On the basis of the JWS and agreed positions by all parties, the Panel accepts and adopts the amendment provisions as set out in the JWS and the s32AA Evaluation<sup>104</sup>
- 3.76 As this matter relates to the subdivision provisions that are contained in Part 2, Subdivision Chapter and Decision Report 8, this report should be read in conjunction with this report.

#### *Matters of Discretion*

- 3.77 Federated Farmers submission sought the following matter of discretion be included to SUB-R12 for subdivision in the Coastal Environment:

*"x. The extent to which appropriate subdivision could strengthen isolated rural communities where cumulative effects of further subdivision and development within the coastal environment will be minor due to proximity to existing subdivided and developed land at cape Palliser, Castlepoint, Flat Point, Mataikona, Ngawi, Otahome, Riversdale and Whangaimoana."*<sup>105</sup>

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<sup>102</sup> Para 17, Reply Statement, Coastal Environment

<sup>103</sup> Para 5 a-e, Officer Reply Statement, Coastal Environment

<sup>104</sup> Appendix 2: 32AA Evaluation, JWS: Coastal Topic: Planning Experts, dated 23 January and 3 February 2025

<sup>105</sup> Federated Farmers (S214.082)

- 3.78 Forest and Bird sought additional standards and matters of discretion also be added to manage vegetation or of habitat value, include setbacks from significant natural areas and from wetlands and control/restrict household pets in new subdivisions in the coastal environment.<sup>106</sup>
- 3.79 Director General of Conservation, sought to add “ecological values” and “natural character” to matter of discretion (2) and amend “natural features and landforms” to “natural features and landscapes”.
- 3.80 Ms. Wheatley addressed each of these matters in turn in her s42A Report and concluded that the amendments sought by Federated Farmers that it was not appropriate to include such a specific issue as a matter of discretion and the purpose of this rule is to protect the values and characteristics of the coastal environment, not to strengthen rural communities and therefore did not recommend any changes.<sup>107</sup>
- 3.81 In respect to Forest and Bird’s amendments, Ms. Wheatley considered that notified Rule SUB-R7 for subdivision within Significant Natural Areas appropriately manages subdivision within Significant Natural Areas and restrictions on household pets can be included in resource consent conditions (i.e. consent notices) for subdivisions when it is appropriate to do so and therefore did not recommend any further changes.
- 3.82 However, Ms Wheatley did consider that amendments sought by the Director General of Conservation, were appropriate as it better aligns with the listed values of the coastal environment as set out in CE-P1 and therefore recommended adding “ecological values” and “natural character” to matter of discretion (2) in SUB-R12(2) and amend “natural features and landforms” to “natural features and landscapes”.<sup>108</sup>
- 3.83 The Panel therefore accepts and adopts the recommended changes to the matters of discretion as set out in Ms. Wheatley’s s42A Report.

### ***General Matters relating to the provisions of the Coastal Environment Overlay***

- 3.84 As set out above in paragraphs 3.20-3.28 there were number of submissions relating to the introduction, objectives, policies, rules and standards of the Coastal Environment that were recommended to be amended prior to the hearing that were not contested, and the Panel have accepted these accordingly.
- 3.85 However, the introductory text, Policy CE-P4: *Activities and subdivision within the coastal environment* and Standards CE-S1, S2 and S3 remained in contention and therefore we set out our evaluation on these provisions below.

### ***Introductory text***

- 3.86 The Director General of Conservation<sup>109</sup> sought additional wording be included at the end of the CE Introduction that the CE chapter should be read in conjunction with the ECO chapter is required to provide clarity to plan users to ensure that the Councils have given effect to their obligations under the Act for integrated management.

<sup>106</sup> Para 260, Officer s42A Report, Coastal Environment

<sup>107</sup> Para 257, Officer s42A Report, Coastal Environment

<sup>108</sup> Para 265, Officer s42A Report, Coastal Environment

<sup>109</sup> S236/FS73

- 3.87 Furthermore, the Director General of Conservation considered that there is a potential gap in the current policy framework to align with Policy 11 of the NZCPS to provide for specific direction about indigenous biodiversity in the coastal context.<sup>110</sup>
- 3.88 Ms. Wheatley responded to these matters in her Summary Statement, concluding that an explicit statement that other chapters apply via cross-references is not necessary and is sufficiently explained in the 'How the Plan Works' section of the PDP.<sup>111</sup> The Panel accepts Ms. Wheatley's conclusion on this matter and agrees that the plans 'How the Plan Works' section is the most appropriate 'one-stop-shop' providing a navigational aid for the plan user. The Panel also considers that including multiple cross-references within a district plan increases complexity, duplication and can result in the possibility of inconsistencies if linkages are inadvertently missed.

*Policy CE-P4: Activities and subdivision within the coastal environment*

- 3.89 There were six submissions and one further submission in support<sup>112</sup> that sought Policy CE-P4: *Activities and subdivision within the coastal environment* be retained as notified, there were eight submitters<sup>113</sup> that opposed the policy and sought amendments. There were also eight further submissions<sup>114</sup> that both opposed and supported the original submissions in opposition.
- 3.90 Whilst there were a number of changes recommended to CE-P4 prior to the hearing that were not contested, which the Panel have adopted as set out above in paras 2.18 (e) and (f), there were additional changes sought to the Policy by submitters that remained in contention.
- 3.91 The outstanding matter in contention with respect to Policy CE-P4, relates to clause (b)(vi), which the Director General of Conservation sought be amended to avoid all adverse effects on significant areas of indigenous vegetation and habitats, not just significant adverse effects, to ensure that the policy implements Policy 11 of the NZCPS.
- 3.92 Ms. Wheatley's response in her s42A Report acknowledged that there is both policy and spatial overlap between the NZCPS and NPS-IB in protecting indigenous biodiversity, particularly within the coastal environment, however, she did not recommend any change to the wording of clause (b)(vii) as a result.<sup>115</sup>
- 3.93 In response to the pre-circulated evidence of Ms. Schipper on behalf of the Director General of Conservation, Ms. Wheatley recommended alternative wording to clause (b)(vii), stating that she acknowledged the point that the NZCPS provides specific direction about indigenous biodiversity in the coastal context, and therefore recommended alternative wording sought by the original submission, which more

<sup>110</sup> Statement of Evidence of Christina Schipper on behalf of Director-General of Conservation, para 113, page 27, dated 2<sup>nd</sup> December 2024

<sup>111</sup> Para 19, Officer Summary Statement, Coastal Environmental.

<sup>112</sup> Fire and Emergency NZ (S172.050), the Telecommunications Companies (S189.072), David Ian McGuinness (S191.052), Brian John McGuinness (S226.005), Ministry of Education (S245.022), and Heritage NZ (S249.052) and Brian John McGuinness (FS86.052).

<sup>113</sup> Toka Tū Ake EQC (S90.027), Wellington Fish and Game (S186.059), Māori Trustee (S212.063), Federated Farmers (S214.089), Meridian Energy (S220.028), East Leigh (S239.032), Forest and Bird (S258.148)

<sup>114</sup> Transpower (FS97.125), Meridian Energy (FS67.196) and Transpower (FS97.078), Te Tini o Ngāti Kahukuraawhitia Trust (FS95.194), Genesis Energy (FS74.027) and opposed by GWRC (FS90.108) Brian John McGuinness (FS86.065), Ian Gunn (FS105.149)

<sup>115</sup> Para 141, Officer s42A Report, Coastal Environment

closely aligns with the wording of Policy 11 of the NZCPS, and invited Ms. Schipper to provide feedback on these changes at the hearing.<sup>116</sup>

- 3.94 The Panel note that Ms. Schipper did not provide any feedback on this matter in her speaking notes at the hearing.
- 3.95 Overall, the Panel agrees with the sentiments raised by the Director General of Conservation in respect to the amendments sought to Policy CE-P4 to provide for NZCPS Policy 11(b) to implement the necessary protection required for coastal vegetation and ecosystems.<sup>117</sup>
- 3.96 However, the Panel considers that the alternative wording of Policy CE-P4 provided by Ms. Wheatley is in general accordance with the outcome sought by the Director General of Conservation<sup>118</sup> and in the absence of any response from Ms. Schipper, we accept that it provides for the two tiered approach that gives effect to the NZCPS as sought by the Director General of Conservation submission.<sup>119</sup>

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<sup>116</sup> Para 20, Officer Summary Statement, Coastal Environmental.

<sup>117</sup> Statement of Evidence of Christina Schipper on behalf of Director-General of Conservation, para 126-133, dated 2<sup>nd</sup> December 2024

<sup>118</sup> Para 124, Statement of Evidence of Christina Schipper on behalf of Director-General of Conservation, para 126-133, dated 2<sup>nd</sup> December 2024

<sup>119</sup> Para 125, Statement of Evidence of Christina Schipper on behalf of Director-General of Conservation, para 126-133, dated 2<sup>nd</sup> December 2024

## 4 Natural Character

### Outline of matters addressed in this section

- 4.1 This section provides for the following in relation to the Natural Character Chapter of the PDP:
- a. sets out the application of the higher order policy documents
  - b. provides a summary of the relevant notified provisions;
  - c. provides a brief overview of submissions received on the provisions;
  - d. provides a summary of the recommended amendments that the Panel adopts; and
  - e. evaluates and sets out our decisions on the key issue remaining in contention.

### Higher order policy framework

- 4.2 The following higher order documents are a relevant consideration to the evaluation of matters in relation to the Natural Character Chapter.

#### *Section 6 (a) of RMA*

- 4.3 Section 6(a) of the RMA directs Councils to recognise and provide for “the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development” as a matter of national importance.

#### *NPS-FM*

- 4.4 At the time of notification, the Natural Character topic embedded the hierarchy of the objective of NPS-FM which is to ensure natural and physical resources are managed in a way that prioritises the health of waterbodies, the health of people, and social, economic, and cultural well-being.
- 4.5 However, it is acknowledged that in May 2024, the Government sought to review and replace the NPS-FM and there is still some uncertainty regarding what changes may result but at the time of notification, the PDP undertook to ensure it was aligned with the relevant provisions at that time.

#### *NZCPS*

- 4.6 The NZCPS contains objectives and policies relating specifically to natural character, particularly **Policies 13 and 14**, which aim to preserve natural character of the coastal environment and protect it from inappropriate subdivision, use, and development and promote restoration or rehabilitation of the natural character of the coastal environment, including by providing policies, rules and other methods directed at restoration or rehabilitation in plans.

#### *The Operative RPS and the Natural Resources Plan*

- 4.7 The RPS and NPS contain objectives and policies relating to natural character particularly in the coastal environment and coastal marine area that the NC Chapter seeks to align with.

### *Strategic Direction Objectives*

- 4.8 The PDP also includes Strategic Direction Objectives relating to natural character within the Natural Environment section that the corresponding provisions of each chapter in the PDP must align with, the following Strategic Direction Objectives are relevant for the Natural Character Chapter:
- a. NE-O1: Natural character, landscapes, features, and ecosystems
  - b. NE-O3: Open Space
  - c. NE-O5: Integrated management
  - d. RE-O4: Character of the rural environment
  - e. TW-O4: Kaitiakitanga
- 4.9 Therefore, the NC Chapter needs to align and deliver the above Strategic Objectives through the chapter provisions, particularly NE-01, to ensure natural environment contributes positively to the Wairarapa's sense of place and identity whilst ensuring it also assists in delivering the other objectives listed above.
- 4.10 Therefore, our observations and findings in relation to the application of Section 6 (a) of the RMA, NPS-FM, NZCPS and Operative RPS and NRP and the Strategic Objectives all form a reference point for our consideration of contested matters in the final part of this section of this Decision Report.

### **Summary of the relevant notified provisions**

- 4.11 The purpose of the Natural Character (**NC**) Chapter is to recognise and preserve natural character within the riparian margins of lakes, rivers, and wetlands.
- 4.12 The PDP Natural Character largely retained the ODP provisions with the key changes seeking to provide for updated lists of significant waterbodies and increased surface waterbody setbacks in the General Rural Zone.
- 4.13 The introductory section of the NC Chapter sets out the criteria for the significant waterbodies. It also explains the connection with the Coastal Environment Chapter.
- 4.14 The NC Chapter contains a single overarching objective (NATC-O1) that sets out that Wairarapa's rivers, lakes, and natural inland wetlands and their margins are to be preserved and enhanced.
- 4.15 The policy framework (Policies NATC-P1-P6) supporting the objectives and seek to:
- a. Retain special qualities and natural character of surface waterbodies
  - b. Encourage the restoration and enhancement of surface waterbodies
  - c. Enable earthworks in proximity to Significant Waterbodies
  - d. Restrict earthworks within 25m of Significant Waterbodies for the purposes of infrastructure maintenance
  - e. Discourage buildings and structures within the proximity of surface waterbodies
  - f. Allow for modification of vegetation in proximity to Significant Waterbodies for pest plant species or associated with primary production

- 4.16 The corresponding rules and standard framework provide for the following activities as permitted activities and where permitted activity criteria are not achieved, they are provided for as restricted discretionary activities:
- a. NATC-R1: Earthworks within 25m of a Significant Waterbody
  - b. NATC-R2: Modification of vegetation and associated earthworks within 25m of a Significant Waterbody

### Overview of submissions

- 4.17 A total of 75 submission points and 26 further submission points were received on the Natural Character Chapter, as set out in further detail in the s42A Report.<sup>120</sup>
- 4.18 Submitters were generally supportive of the intentions of the NC Chapter, but sought amendments to the provisions relating to modification of vegetation and associated earthworks within 25m of a Significant Waterbody. There were also three submitters who sought waterbodies be added or deleted from Schedule 11.<sup>121</sup>

### Recommended amendments that the Panel adopts

- 4.19 The Panel has carefully considered the recommendations by the Reporting Officer contained in the S42A Report and the Summary Statement and are satisfied that the following recommended changes addressed submitters concern and were not actively contested at the hearing.
- 4.20 As a result, we have accepted and adopted the following amendments below on the basis of the accompanying reasoning by the Reporting Officer and s32AA evaluations and – where relevant – the evidence of others the Officers have relied upon and make no further evaluation on these:
- a. Amend **NATC-R2** to enable vegetation modification for biosecurity purposes and include indigenous biodiversity in the matters of discretion.<sup>122</sup>
  - b. Amend **NATC-P6** to enable vegetation modification for biosecurity purposes.<sup>123</sup>

### Decisions on key issues remaining in contention

- 4.21 We now turn to our evaluation of the sole issue that was in contention prior to the hearing in relation to the evidence provided by Mr Anderson, representing the Telecom Companies<sup>124</sup>, who sought *examples of infrastructure given in Policy NATC-P3* be removed.

#### *Examples of Infrastructure within NATC-P3*

- 4.22 The submission from the Telecom Companies initially sought that Policy NATC-P3 only include reference to 'infrastructure' in general and not give specific examples of

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<sup>120</sup> para 8, Officer's Section 42A Report – Natural Character, 18 November 2024

<sup>121</sup> para 10, Officer's Section 42A Report – Natural Character, 18 November 2024

<sup>122</sup>Including the reasons set out in para 152-156, Officer's Section 42A Report – Natural Character, 18 November 2024 and the s32AA evaluation at paras 162-164.

<sup>123</sup>Based on evidence relied on by Reporting Officer, Summary Statement, para 15 – Coastal Environment, Evidence of Emily Levenson for Horticulture NZ, para 39, dated 2 December 2024

<sup>124</sup>S189

infrastructure as notified.

- 4.23 Initially, the Reporting Officer for Natural Character, Mr Matthew Gulson, did not recommend any further changes to the policy in his s42A Report, citing that removing certain examples would not have any material difference in the interpretation of the policy.<sup>125</sup>
- 4.24 At the hearing, we heard from Mr Anderson on behalf of the Telecom Companies who continued to seek Policy NATC-P3 does not need to include examples of infrastructure on the basis that infrastructure is a defined term in the PDP and would be clearer without examples being referred to.<sup>126</sup>
- 4.25 Mr Gulson returned to this matter in his Summary Statement, and on the basis of the evidence presented at the hearing by Mr Anderson, Mr Gulson subsequently reversed his initial s42A Report recommendation and recommended that the examples of infrastructure be removed from the policy. Mr Gulson acknowledged that providing examples of common infrastructure in the policy could be considered confusing and removing examples from the policy will be concise and understandable.<sup>127</sup>
- 4.26 The Panel accepts and adopts Mr Gulson's revised position to amend NATC-P3, for the reasons set out in his Reply Statement, based on evidence provided by Mr Anderson and the further s32AA Evaluation provided.<sup>128</sup>

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<sup>125</sup>Para 111, Officer's Section 42A Report – Natural Character, 18 November 2024

<sup>126</sup>Para xi, Telecommunications Companies Hearing Presentation, dated 17 December 2024

<sup>127</sup>Para 5, Officers Reply Statement – Natural Character

<sup>128</sup>Para 4-8, Officers Reply Statement – Natural Character

## 5 Natural Features and Landscapes

### Outline of matters addressed in this section

- 5.1 This section provides for the following in relation to the Natural Features and Landscapes (**NFL**) Chapter of the PDP:
- a. sets out the application of the higher order policy documents
  - b. provides a summary of the relevant notified provisions;
  - c. provides a brief overview of submissions received on the provisions;
  - d. provides a summary of the recommended amendments that the Panel adopts; and
  - e. evaluates and sets out our decisions on the key issue remaining in contention.

### Higher order policy framework

- 5.2 The following higher order documents are a relevant consideration to the evaluation of matters in relation to the Natural Features and Landscape (NFL) Chapter.
- 5.3 The following higher order documents are a relevant consideration to the evaluation of matters in relation to the Natural Character Chapter.

### *Section 6 (a, b and e) of RMA*

- 5.4 Section 6(a) of the RMA directs Councils to recognise and provide for “the preservation of the natural character of the coastal environment (including the coastal marine area), wetlands, and lakes and rivers and their margins, and the protection of them from inappropriate subdivision, use, and development” as a matter of national importance. As there are ONFLs identified within the Coastal Environment, Section 6(a) is a relevant consideration.
- 5.5 Section 6(b) seeks the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development, which are identified within this chapter.
- 5.6 Section 6(e) seeks the relationship of Māori and their culture and traditions with their ancestral lands, water, sites, waahi tapu, and other taonga and as there is strong Māori cultural relationship with ancestral lands, water, sites, waahi tapu, and other taonga within the Wairarapa, Section 6(e) is a relevant consideration.

### *NZCPS*

- 5.7 The NZCPS **Objective 2** aims to preserve natural character of the coastal environment and protect natural features, whilst Policy 15 seeks to protect the natural features and natural landscapes (including seascapes) of the coastal environment from inappropriate subdivision, use, and development.

### *NPS-ET*

- 5.8 Policies 7 and 8 of the NPS-ET seeks that transmission systems should avoid adverse effects on outstanding natural landscapes, areas of high natural character and areas of high recreation value and amenity and existing sensitive activities in both urban

and rural environments.

### ***NPS-FM***

- 5.9 The NPS-FM allows for a rule in a plan may be more stringent than these regulations if the rule recognises and provides for the protection of outstanding natural features and landscapes from inappropriate use and development.

### ***The Operative RPS and the Natural Resources Plan***

- 5.10 The RPS and NRP contain objectives and policies relating to outstanding natural features and landscapes that the NFL Chapter seeks to align with, in particular, that they are identified and protected.

### ***Strategic Direction Objectives***

- 5.11 The PDP also includes Strategic Direction Objectives relating to natural character, landscapes, features and ecosystems within the Natural Environment section that the corresponding provisions of each chapter in the PDP must align with, the relevant Strategic Direction Objectives for the NFL are:
- a. NE-01: Natural character, landscapes, features, and ecosystems
  - b. NE-03: Open Space
  - c. NE-05: Integrated management
  - d. TW-04: Kaitiakitanga
- 5.12 Therefore, the NFL Chapter needs to align and deliver the above Strategic Objectives through the chapter provisions.
- 5.13 Therefore, our observations and findings in relation to the application of Section 6 (a, b and e) of the RMA, NPS-FM, NZCPS, NPS-ET and Operative RPS, NRP and Strategic Objectives of the PDP all form a reference point for our consideration of contested matters in the final part of this section of this Decision Report.

### **Summary of the relevant notified provisions**

- 5.14 The purpose of the NFL Chapter is to identify Outstanding Natural Features and Landscapes and Special Amenity Landscapes within the Wairarapa and provide protection or maintenance of their values.
- 5.15 The chapter applies to two spatial overlays identifying Outstanding Natural Features and Landscapes and Special Amenity Landscapes throughout the Wairarapa districts. These are district-wide overlays which apply across all zones containing these landscapes and features.
- 5.16 The introductory section of the chapter, as notified, provides an explanation of how Outstanding Natural Features and Landscapes and Special Amenity Landscapes are identified as set out in associated schedules SCHED9 and SCHED8 respectively.
- 5.17 The NFL Chapter contains two objectives (NFL-O1 and NFL-O2) providing for the protection of Outstanding Natural Features and Landscapes and maintenance and enhancement of Special Amenity Landscapes.

- 5.18 The policy framework (Policies NFL-P1-P7) supports the objectives by seeking to:
- a. Identify Outstanding Natural Features and Landscapes
  - b. Identify Special Amenity Landscapes
  - c. Only allows for subdivision, use, and development within an Outstanding Natural Features and Landscapes outside the Coastal Environment where it avoids significant adverse effects
  - d. Avoids adverse effects from subdivision, use, and development within Outstanding Natural Features and Landscapes within the Coastal Environment
  - e. Allows for appropriate activities within Outstanding Natural Features and Landscapes
  - f. Increase public awareness of landscape values
  - g. Provide support and incentivise voluntary protection for landowners
- 5.19 The corresponding rules and standard framework provide for the following activities as permitted activities and where permitted activity criteria are not achieved, they are provided for as restricted discretionary activities.
- 5.20 For activities that are not provided under the above rule framework, or for plantation forestry activities, the activity status is non-complying.
- a. NFL-R1: Earthworks, modification of indigenous vegetation, or buildings and structures (including construction, additions, and alterations) within Outstanding Natural Features and Landscapes
  - b. NFL-R2: Plantation Forestry within Outstanding Natural Features and Landscapes
- 5.21 The three corresponding standards relate to earthworks, modification of indigenous vegetation and buildings and structures.

### **Overview of submissions**

- 5.22 A total of 83 submission points and 36 further submission points were received on the Natural Features and Landscape Chapter, as set out in further detail in the s42A Report.<sup>129</sup>
- 5.23 There were a range of issues raised by submitters, and where amendments were sought, this was generally to better align objectives and policies with higher order documents or provide for or exempt specific activities from rules and standards.
- 5.24 Submitters also sought amendments to the spatial extent of mapped Outstanding Natural Features and Landscapes.<sup>130</sup>

### **Recommended amendments that the Panel adopts**

- 5.25 On the basis of the Panel's careful consideration of the recommendations by the Reporting Officer contained in the S42A Report and the Summary Statement and corresponding s32AA Evaluations, and – where relevant – the evidence of others the

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<sup>129</sup> para 5, Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024

<sup>130</sup> para 5, Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024

Officers have relied upon, we have accepted and adopted the following amendments and make no further evaluation on these:

- a. Amend **Objectives NFL-O1 and NFL-O2** to clarify the scope of the objectives<sup>131</sup>
- b. Amend **Policies NFL-P2** to clarify the contributing factors, scope and applications of the policies and subsequent consequential changes to Policies **NFL-P3 and P4** subsequent deletion of **Policy NFL-P5**<sup>132</sup>
- c. Amend **NFL-R1** to be more enabling for biosecurity and National Grid Infrastructure purposes<sup>133</sup>
- d. Amend **NFL-S3** to enable telecommunications poles up to 8m in height<sup>134</sup>
- e. Amend **Sub-R13** to include vegetation as a matter of discretion for subdivision within an ONFL<sup>135</sup>
- f. Amend Outstanding Natural Features and Landscapes Tararua/Remutaka Forest Parks (**ONFL 1**) to exclude the rail corridor.<sup>136</sup>

### Decisions on key issues remaining in contention

5.26 We now turn to our evaluation of the key issues that remained in contention prior to and/or at the hearing as follows:

- a. *Schedule 8 – Special Amenity Landscapes - Riversdale Maps – SAL1*
- b. *Nga Waka o Kupe – ONFL9*

#### *Schedule 8 – Special Amenity Landscapes - Riversdale Maps – (SAL1, Wairarapa Coastline)*

- 5.27 Initial submissions in relation to SAL1 were supported by Māori Trustee<sup>137</sup> however, other submissions<sup>138</sup> sought that Schedule 8 be deleted in its entirety on the basis that there are no rules relating to the overlay and therefore serves no practical purpose.<sup>139</sup>
- 5.28 The submission by East Leigh sought to remove the overlay, in particular from coastal settlements and surrounds and to 'delete 40m coastal contour'.<sup>140</sup>
- 5.29 Ms Wheatley responded to the latter point in her s42A Report explaining that whilst there are no associated rules for Special Amenity Landscapes, the relevant objective

<sup>131</sup>Including the reasons set out in para 59-69, Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 70-73.

<sup>132</sup>Including the reasons set out in para 86-87, 95, 100, 108 Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 113-116.

<sup>133</sup>Including the reasons set out in para 120-128 Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 132-135

<sup>134</sup>Including the reasons set out in para 138-142 Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 156-159

<sup>135</sup>Including the reasons set out in para 169-171 Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 172-175

<sup>136</sup>Including the reasons set out in para 203 Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024 and the s32AA evaluation at paras 205-208

<sup>137</sup>(S212.078)

<sup>138</sup>Federated Farmers (S214.121)

<sup>139</sup>Para 186, Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024

<sup>140</sup>Submission for East Leigh (s239), dated 19 December 2023

and policy direction in this chapter will apply if resource consent are required for an activity within a Special Amenity Landscape and therefore did not recommend deleting Scheule 8.<sup>141</sup>

- 5.30 To note, Ms Wheatley did not specifically address changes sought to SAL1 by East Leigh's submission in her s42A Report.
- 5.31 On the basis of the pre-circulated evidence from East Leigh, both Ms Wheatley and the Council's Landscape Planner, Ms Emma McRae provided further assessment on East Leigh's requested amendments to SAL1 in their respective Hearing Statements. Neither Ms McRae or Ms Wheatley recommended any changes in terms of the spatial boundary in relation to East Leigh's submission.<sup>142</sup> In particular, Ms McRae concluded that *"the inclusion of the Riversdale settlement and terraces within the proposed SAL is justified due to their setting as part of the wider landscape and their shared and recognised values which form a part of the overall values of the SAL. The inclusion of these areas is also consistent with the higher order policy for the inclusion of Special Amenity Landscapes as outlined in the Wellington Regional Policy Statement."*<sup>143</sup>
- 5.32 At the hearing, Ms Foster, on behalf of East Leigh continued to oppose the identification of the submitters land as SAL1<sup>144</sup> on the basis that the supporting Policy NFL-P2 does not provide sufficient guidance as to what constitutes special amenity landscape values, and the large area encompassed by SAL1, including modified built environments of coastal settlements such as Riversdale Beach.<sup>145</sup>
- 5.33 At the hearing, we heard from Mr Hudson and Ms Foster on behalf of East Leigh in relation to the mapping of the Riversdale township being included in the SAL1. Both Mr Hudson and Ms Foster continue to seek the *"removal of Special Amenity overlay from Riversdale Settlement and Riversdale Terraces as these areas do not have a Dominance of Natural Components nor meet the requirements of RPS Policy 27."*<sup>146</sup>
- 5.34 Ms. Wheatley returned to this matter in her Reply Statement, concluding that *"as drafted, Objective NFL-O2 and Policy NFL-P2 that support the application and implementation of Special Amenity Landscapes accurately reflect the direction of the Wellington RPS. I do not recommend any changes in this regard, including to the spatial extent of the SAL1 as mapped in the notified Proposed District Plan."*<sup>147</sup>
- 5.35 The Panel acknowledges that there remained a difference of opinion between Reporting Officers and the experts representing East Leigh at the conclusion of the hearing.
- 5.36 On careful review of all evidence presented and the Reporting Officers assessment, the Panel prefers the evidence of the Ms. Foster and Mr. Hudson in particular the following rational Ms. Foster provides that the SAL1 is a large stretch of the Wairarapa coastline, and whilst the majority of the SAL1 aligns with the values described in SCHED8, such as "natural coastal processes" and an "open, expansive, isolated and

<sup>141</sup> Para 188, Officer's Section 42A Report – Natural Features and Landscapes, 18 November 2024

<sup>142</sup> Para 20, bullet point d. Officers Summary Statement – Natural Features and Landscapes, Erica Wheatley

<sup>143</sup> Para 30, page 5, Officer Summary Statement – Natural Features and Landscapes, Emma McRae

<sup>144</sup> Para 15.8, Evidence of Christine Foster – Hearing Stream 6 – Overlays Part 2, dated 2 December 2024

<sup>145</sup> Para 4, Officers Reply Statement – Natural Features and Landscapes, Erica Wheatley

<sup>146</sup> Para 45, page 11, Brief of Evidence of John Hudson on behalf of East Leigh, dated 2 December 2024

<sup>147</sup> Para 11, Officers Reply Statement – Natural Features and Landscapes

largely undeveloped” landscape, the built-up, urban nature of Riversdale Beach settlement does not.<sup>148</sup>

- 5.37 Furthermore, in respect to Mr Hudson evidence, we also agree that that grouping built-up and natural areas together under the same SAL designation may misrepresent the true amenity values of each area and the open and natural character of the reserve area to the south of the Riversdale settlement cannot have the same value as the built-up areas in the settlement, especially in terms of ‘Dominance of Natural Components’ in respect of the criteria for an SAL contained in Policy NFL-P1.<sup>149</sup>
- 5.38 Therefore, the Panel accepts in part the relief sought by East Leigh to delete the SAL1 over the Riversdale Beach settlement area but maintain the SAL1 over the remaining Wairarapa Coastline. This change is indicated in the map below.



### ***S32AA Evaluation***

- 5.39 The Panel considers the amended SAL1 overlay better aligns with Policy NFL-P1 of the PDP in that it more accurately reflects the criteria set out within the policy, particularly clause (b) in that their natural components dominate over the influence of human activity and the removal of the Riversdale Beach Settlement ensures that the remaining areas of the SAL1 as notified align with this clause.
- 5.40 There are no identified risks of acting versus not acting in relation to this matter as

<sup>148</sup>Para 15.9 Statement of Evidence of Christine Foster on behalf of East Leigh, dated 2 December 2024

<sup>149</sup> Para 44 Statement of Evidence of John Hudson on behalf of East Leigh, dated 2 December 2024

the Riversdale Beach settlement is already developed and therefore is no risk development resulting in adverse effects on any Significant Amenity Landscape.

### ***Nga Waka o Kupe Hills – ONFL9***

- 5.41 As notified, the spatial extent of Nga Waka o Kupe Hills (ONFL9) was sought to be increased slightly from the ODP.
- 5.42 One submitter<sup>150</sup> sought that the extent of ONFL9 be reduced back as “the Three Canoes” or as an alternative relief, seeks the buffer zone around the landform be reduced to only include the land titles containing the landform.
- 5.43 In response to this submission, Ms. McRae, Council’s Landscape Planner undertook a site visit to this property prior to the hearing and in her Summary Statement, concluded that the location where the submitter has requested the boundary to be adjusted back would sever the continuity of the landform which is being recognised by the ONFL boundary and that the removal of this area would be incongruous with the wider recognised landform of Nga Waka O Kupe and therefore Ms. McRae did not recommended any changes to ONFL9. On the basis of Ms. McRae’s assessment, Ms. Wheatley also did not recommend any further changes to ONFL9.
- 5.44 Whilst the submitter did not present further evidence at the hearing, the Panel requested a copy of the evaluation text and maps of Nga Waka o Kupe from the Landscape Evaluation Study.
- 5.45 The Panel also carried out a site visit and tested the evidence of Ms. McRae with regards to the ONFL boundary.
- 5.46 On review of the evaluation text<sup>151</sup>, in particular the rationale of the spatial extent text, coupled with the recommendations from Ms. McRae, the Panel have decided to adopt a hybrid boundary, which lies between the notified version and the boundary sought by the submitter.
- 5.47 Therefore, the Panel partially accepts the relief sought by the submitter but considers that the cadastral boundary of the site, is the most rational boundary as this would not unduly restrict the working ability of the farming activities currently occupying the land.

### ***S32AA Evaluation***

- 5.48 The Panel consider that the amended boundary is more appropriate and is the most appropriate way to the achieve the purpose of the Act.<sup>152</sup> Furthermore, the amended boundary will not affect the integrity of the landscape feature but will provide for a more logical and workable boundary to allow the owner to continue operating the existing farming activities.

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<sup>150</sup> Shaun Draper (S63.001)

<sup>151</sup> <https://drive.google.com/file/d/14mVVyJOviAAIqzHto10kKlh6d8mFtsI/view>

<sup>152</sup> Section 6(b) of the Resource Management Act 1991

## 6 Public Access

### Outline of matters addressed in this section

- 6.1 This section provides for the following in relation to the Public Access (**PA**) Chapter of the PDP:
- a. sets out the application of the higher order policy documents;
  - b. provides a summary of the relevant notified provisions;
  - c. provides a brief overview of submissions received on the provisions;
  - d. provides a summary of the recommended amendments that the Panel adopts; and
  - e. evaluates and sets out our decisions on the key issue remaining in contention.

### Higher order policy framework

- 6.2 The PA Chapter provides for section 6 matters of the RMA in that it maintains and enhances public access to and along the Coastal Marine Area, lakes, and rivers, which are matters of national importance. Furthermore, public access to and along the coastal environment is a key consideration of the New Zealand Coastal Policy Statement, which the chapter addresses in conjunction with subdivision chapter.

### Summary of the relevant notified provisions

- 6.3 The purpose of the PA Chapter is to provide for public access to and along surface waterbodies and the Coastal Marine Area throughout the Wairarapa.
- 6.4 The introductory section of the chapter, as notified, provides an explanation of how public access is provided and the connection and alignment of public access provisions within the Subdivision Chapter and the Natural Character chapter where they relate to public access for esplanade reserves and esplanade strips and margins of Significant Waterbodies respectively.
- 6.5 The PA Chapter contains a single overarching objective (PA-O1) providing for public access and enjoyment to coast, rivers, lakes, and natural inland wetlands and their margins.
- 6.6 The policy framework (Policies PA-P1-P3) supports the objectives by seeking to:
- a. Require, through subdivision, esplanade reserves and strips to form connections where appropriate
  - b. Enable compatible activities adjacent to the coast and surface waterbodies that do not restrict or prevent public access
  - c. Ensure public access to the Coastal Marine Area is enhanced and only restricted for limited reasons as set out in the policy
- 6.7 There are no corresponding rules or standards contained within this chapter.

## Overview of submissions

- 6.8 A total of 22 submission points and 8 further submission points were received on the Public Access chapter.<sup>153</sup>
- 6.9 Submissions were generally partially supportive of the notified provisions, with most amendments sought to give effect to higher order documents, or to reduce effects on private landowners or existing activities. There was one request for an additional objective.<sup>154</sup>

## Recommended amendments that the Panel adopts

- 6.10 The Panel have considered the recommendations by the Reporting Officer contained in the S42A Report and the Summary Statement and corresponding s32AA Evaluations, and – where relevant – the evidence of others the Officers have relied upon, we have accepted and adopted the following amendments and make no further evaluation on these based on the fact that these matters were not contested by the time of the hearing:
- a. Amend **PA-O1** to better align the objective with the purpose of esplanade reserves and strips under the RMA<sup>155</sup>
  - b. Amend **PA-P1** to better align the policy with the purpose of esplanade reserves and strips under the RMA<sup>156</sup>
  - c. Amend **PA-P3** to give effect to Policy 19 of the NZCPS, wherein access to the coast can be restricted.<sup>157</sup>

## Decisions on key issues remaining in contention

- 6.11 One matter remained in contention between the Reporting Officer and evidence of one submitter in relation to ***Restriction extended to Lakes, Rivers and Wetlands***.<sup>158</sup> We provide our evaluation on this matter below.

### ***Restriction extended to Lakes, Rivers and Wetlands***

- 6.12 The submitter originally sought that PA-P3 should be extended to cover lakes, rivers, and wetlands, to give effect to the RPS Policy 53.
- 6.13 Whilst the Reporting Officer, Mr Gulson agreed with the submitter that it is appropriate to restrict access to lakes, rivers and wetlands in accordance with the RPS, the changes recommended to PA-P3, as agreed by the Panel above contained in the s42A Report, was considered to appropriately attend to the submitters concerns.
- 6.14 However, at the hearing, the submitter<sup>159</sup> continued to seek amendments to PA-P3 to extend to cover lakes, rivers, and wetlands.

<sup>153</sup> para 52, Officer's Section 42A Report – Public Access, 18 November 2024

<sup>154</sup> Federated Farmers NZ (S214.072)

<sup>155</sup> Including the reasons set out in para 61-63 Officer's Section 42A Report – Public Access, 18 November 2024 and the s32AA evaluation at paras 77-80

<sup>156</sup> Including the reasons set out in para 88-90 Officer's Section 42A Report – Public Access, 18 November 2024 and the s32AA evaluation at paras 106-108

<sup>157</sup> Including the reasons set out in para 96-102 Officer's Section 42A Report – Public Access, 18 November 2024 and the s32AA evaluation at paras 106-108

<sup>158</sup> Emily Levenson, S221.092 and FS13.051

<sup>159</sup> Ms McLeod, representing Transpower (S218)

- 6.15 Mr Gulson returned to this matter in his Reply Statement, concluding that he considered the initial changes made to Policy PA-P3 as set out in his s42A Report remain appropriate and no further changes should be made to this policy but conceded that an additional policy should be inserted in response to the submitters specific request for public access to and along lakes, rivers and wetlands.
- 6.16 The Panel accepts and adopts the additional policy for the reasons and corresponding s32AA set out in the Reporting Officers Reply Statement<sup>160</sup>.

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<sup>160</sup> Including the reasons set out in para 4-6 Officers Reply Statement – Public Access, and the s32AA evaluation at paras 7-9

## 7 Overall Conclusions

- 7.1 For the reasons set out in the previous sections, we have determined the adoption of specific changes to the aforementioned chapters and provisions in the PDP.
- 7.2 Our amendments are shown in track change in the 'tracked' version of the provisions in **Appendix 3** and in 'clean' form in the 'accepted' version of the provisions in **Appendix 4**.
- 7.3 Overall, we find that these changes will ensure the PDP better achieves the statutory requirements and national policy directions and will improve its useability.