

**RECOMMENDATION REPORT OF THE
INDEPENDENT HEARING PANEL**

***PROPOSED PLAN CHANGE 49 TO THE
OPERATIVE UPPER HUTT CITY DISTRICT
PLAN 2004:***

(A) OPEN SPACES;

AND

***(B) VARIATION 1 TO PROPOSED PLAN
CHANGE 49 – SILVERSTREAM SPUR.***

31 July 2024

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2.0 Index of Abbreviations

Abbreviation	Means
District Plan	Operative Upper Hutt City District Plan 2004
HBA	2023 Wellington Regional Housing and Business Development Capacity Assessment ¹
IPI	The Upper Hutt City Council's Intensification Planning Instrument under s80E of the Resource Management Act 1991
NPS-FM	National Policy Statement on Freshwater Management 2020
NPS-IB	National Policy Statement on Indigenous Biodiversity 2023
NPS-HPL	National Policy Statement on Highly Productive Land 2022
NPS-UD	National Policy Statement on Urban Development 2020
PC50	Proposed Plan Change 50 to the Upper Hutt District Plan
Provisions	The contents of a District Plan, including objectives, policies, rules, standards and maps
RMA	Resource Management Act 1991
RPS	The Regional Policy Statement for the Wellington Region (2013)
s32 report	The PC49 and Variation 1 reports prepared by UHCC pursuant to Section 32 of the RMA
s42A report	The reports prepared by UHCC pursuant to s42A of the RMA
SASMs	Sites and Areas of Significance to Māori
SNA	Significant Natural Area
the Act	Resource Management Act 1991
the Council / UHCC	Upper Hutt City Council
the Spur	The portion of the Silverstream Spur that is subject to Variation 1

¹ [Regional Housing & Business Development Capacity Assessment 2023 - WRLC](#)

3.0 Executive Summary

1. This report sets out the recommendations of the independent hearing panel to the Upper Hutt City Council (Council) on Proposed Plan Change 49 (PC49) to the Operative Upper Hutt City District Plan 2004 – Open Spaces, and Variation 1 to PC49 – Silverstream Spur.
2. In summary, the purpose of PC49 is to review the open space zones to ensure they are zoned the most appropriate category of open space zones under the Zone Framework Standard of the National Planning Standards 2019. The most appropriate open space zone category is selected based on the use of each site. PC49 also includes:
 - (a) adjusting the geographical extent of open space zones;
 - (b) the rezoning of land from other zones to open space zones;
 - (c) the rezoning of land from open space zone to other zones;
 - (d) amendments to the financial contribution provisions; and
 - (e) other related and consequential amendments across the District Plan.
3. The section 32 evaluation explains² that the purpose of Variation 1 is to rezone the Upper Hutt City Council owned portion of the Silverstream Spur (the Spur) from General Residential Zone (with a Residential Conservation Precinct³), and General Rural Zone to Natural Open Space Zone.
4. The Variation includes site-specific provisions to enable a potential infrastructure corridor through the Spur that could provide road access to the Southern Growth Area⁴, as well as provide improved community access to the Spur for passive recreation activities. The identification of a potential Significant Natural Area (SNA) with associated provisions, referred to as the ‘Silverstream Spur Natural Area’ is also included in the plan change.
5. The Panel makes a number of recommendations to amend the PC49 and Variation 1 provisions in response to the matters raised in submissions.

4.0 Introduction and Report Purpose

6. This report sets out the Panel’s recommendations to Council on PC49 to the operative District Plan, and Variation 1 to PC49. The purpose of the report is to set out the basis for the Council’s consideration of the Panel’s recommendations, and ultimately, Council’s decisions on PC49 and Variation 1.

² At section 1.0 – *Introduction to Variation 1*.

³ The Residential Conservation Precinct has subsequently been removed via the Council’s IPI.

⁴ As identified in in the Council’s *Land Use Strategy 2016 - 2043*, p.79:

<https://www.upperhuttcity.com/files/assets/public/v/1/yourcouncil/land-use-strategy-2016-2043.pdf>

7. The scope of any recommended amendments to PC49 and Variation 1 is limited to that which is available via the changes and decisions requested by submissions and further submissions on the notified provisions, and amendments that are considered necessary to give effect to relevant national direction.
8. The plan change and variation purposes as notified are summarised in the executive summary above. We outline the background to the plan change and variation 1 in due course. PC49 and Variation 1 have been the subject of separate section 32 evaluation reports⁵, stakeholder consultation, public notification, and the preparation of s42A reports⁶. The plan change and the variation were subject to a combined hearing process.
9. Our recommendations to the Council form the final part of the formal plan change and variation processes before the Council makes its decisions.

5.0 Appointment of Panel

10. Pursuant to section 34A RMA 1991, in October 2023, Council appointed to a panel of independent hearing commissioners Sue Wells (Chair), Ina Kara-France (Tikanga Māori) and Matthew Muspratt (Independent Planner) to hear and consider submissions on PC49 and Variation 1 and make recommendations to the Council as to whether PC49 and Variation 1 should be declined, approved, or approved with amendments.

6.0 Panel Role and Report Outline

11. The Hearings Panel's role is to hear submissions and consider evidence on Plan Change 49 – Open Spaces, and Variation 1 to Plan Change 49 – Silverstream Spur. The authority delegated to us by the Council includes and is limited to all necessary powers under the RMA to conduct the hearing, and to hear and make recommendations to the Council as to its final decisions on PC49 and Variation 1.
12. Upon consideration of all submissions and evidence we make recommendations to the Council on:
 - (a) Whether to accept, accept in part, or reject the submissions and further submissions;
 - (b) Amendments to PC49 and Variation 1 provisions in response to the matters raised in the submissions; and

⁵ Section 32 of the RMA sets out the requirements for preparing and publishing reports that evaluate the appropriateness of a plan change or variation.

⁶ S42A of the RMA is the basis for the requirement to prepare a report on matters raised in submissions and further submissions. These reports were prepared by experienced planners employed by the Council.

- (c) Other matters relevant to the plan change and variation that the Council may wish to address via other procedures or methods.
13. This report sets out the key matters in contention for PC49 and Variation 1 and sets out our analysis, reasoning, and recommendations for each of the key matters. To maintain readability we have separated our discussion of the key matters in contention and our recommendations for PC-49 and Variation 1.
 14. The content of this report is intended to satisfy the Council's decision-making obligations and associated reporting requirements under the RMA, including section 32AA⁷. While the Panel has turned its' mind to every submission, this report does not address each in detail. Therefore, this report must be read in conjunction with **Appendices 1 and 2** where we make recommendations on all submissions and further submissions.
 15. Having familiarised ourselves with PC49 and Variation 1, their background material, read all submissions and further submissions, conducted the hearings and undertaken site visits, we hereby set out our recommendations to Council in this report and its appendices.

Report Structure

16. Our report is primarily organised into three parts as follows:
 - (a) Factual context including:
 - (i) Procedural matters;
 - (ii) Scope and relevant tangential matters including other plan changes the Council has made operative or publicly notified since PC49 and Variation 1 were publicly notified;
 - (iii) Hearing details;
 - (iv) Directions and minutes issued
 - (v) Details of site visits;
 - (vi) Background information; and
 - (vii) Historic and cultural context.
 - (b) Evaluation of the key issues raised in submissions for PC49. This section is structured around each of the key issues. We provide an overview of each issue, any relevant matters raised by submissions and, where relevant, references to evidence or statements presented at the hearing. We conclude with our discussion and reasoning before making our recommendation on each key issue, having had regard to the necessary statutory considerations that underpin our recommendations.

⁷ Section 32AA of the RMA requires the Council to carry out and publish a further evaluation of any changes that have been made to a plan change or variation since the original section 32 evaluation report was published.

- (c) Evaluation of key issues raised in submissions for Variation 1. Our evaluation in this section follows the same format as that described for PC49 above.
17. In forming our recommendations on provisions and submissions we acknowledge that determining the most appropriate form of PC49 and Variation 1 provisions is not dependant on the amount of support or opposition to the provisions expressed in the submissions. We have focused our role on evaluating the most appropriate method to achieve the purpose of the RMA and the objectives of the plan change and variation. We have considered the reasonably practicable options of achieving the objectives, and turned our mind to the efficiency, effectiveness and risks of those options. We have considered the environmental, economic, social and cultural effects that we anticipate would arise from the implementation of the provisions. In addition, we have considered any opportunities for economic growth and employment that are anticipated to be provided or reduced.⁸

7.0 Acknowledgements

18. We would like to begin by expressing our gratitude to mana whenua, all submitters, experts, and legal advisors who participated in the hearings. The panel was intentional in placing respect for tikanga Māori at the centre of the hearing process. The panel is extremely grateful to all Council officers who started and closed each day with karakia, and in particular wishes to recognise Kelly Gee (Waikato / Ngati Maniapoto) for his very special welcome at the start of the hearings. The panel would also like to thank Richard Te One (Te Ātiawa, Taranaki Iwi) for accompanying the panel on its site visit.
19. We thank the s42A report authors Ms Thomson and Ms Rushmere for their professional advice, and their assistance in ensuring we had access to the information we requested during the hearings and via the right of reply.
20. The hearing was organised and conducted smoothly, and this would not have been possible without the expertise of Ms Boyd. We thank Ms Boyd for acting as an effective conduit between us, submitters, counsel, and the s42A report authors.
21. We thank Upper Hutt City Council planning staff Mr Nick Tait and Ms Jessica Langston who assisted us greatly in navigating the City for our visits in advance of the hearing.
22. The panel also wishes to acknowledge the goodwill shown by all submitters, independent experts and counsel and Council officers for their participation in the reconvened hearing in a collaborative manner. It greatly assisted the Panel in clarifying complex and subtle issues relating to the delineation of the area/s of the potential SNA on the Silverstream Spur site.

⁸ As required by s.32 of the RMA.

8.0 Site Visits

23. The panel made site visits on 23 November 2023. The Panel visited or viewed from public areas the following sites:
- (a) 150 Gillespies Road (Lot 1 DP 58853) – viewed from Main Road North⁹;
 - (b) 146 Gillespies Road (Part Lot 2 DP 17413)¹⁰;
 - (c) Mangaroa peatlands (from Wallaceville Road);
 - (d) Hutt Valley Clay Target Club – 280 Wallaceville Road (Part Lot 1 DP 9009);
 - (e) 27 Blenheim Street (Lot 3 DP 456184);
 - (f) The Royal Wellington Golf Club – 28 Golf Road; and
 - (g) The Silverstream Spur (from Kiln Street, Sylvan Way, Fergusson Drive, and Reynolds Bach Drive).

Wahi Tapu Area

24. In preparing for the hearing the panel was aware that there was a known wahi tapu area¹¹ which, while outside the boundaries of this Plan Change, was within the larger Wooster & Teasdale site. To ensure tikanga was maintained, the panel was accompanied by Mr Richard Te One, a mana whenua representative of Wellington Tenths Trust to assist the Panel in ensuring cultural protocols were observed during our site visit.

9.0 Procedural Matters

Submissions and Further Submissions

25. As stated above, the Panel’s consideration of the matters raised in submissions is not limited to those submitters who presented to the Panel during the hearing. Our report does not identify and discuss all matters raised in submissions. This should be taken to mean that where we do not specifically refer to a matter raised in a submission, we agree with the analysis and recommendation of the s42A report author. Readers are therefore directed to **Appendices 1 and 2**, which contains our recommendations to Council on all submissions and further submissions on PC49 and Variation 1 respectively.
26. A summary of the matters raised in submissions is provided below. We have structured our discussion and analysis generally around the themes and topics identified below.

⁹ Part of the Wooster & Teasdale site.

¹⁰ Part of the Wooster & Teasdale site.

¹¹ The Whakataka Pa site located at 146 Gillespies Road is the site of a raid by Te Rauparaha which included capturing of the Pa and ‘wiping out’ the Ngati Kahukuraawhitia residents. Upper Hutt District Plan reference no. 21, HH-SCHED1 – Heritage Features.

PC49

27. PC49 attracted 27 submissions and 50 further submissions. As the plan change specifically excluded the Silverstream Spur site, submissions and further submissions requesting the rezoning of the Spur were deemed out of scope by the Council. Council subsequently decided to prepare and notify Variation 1 to PC49 which specifically addressed the zoning and provisions for the Silverstream Spur site.
28. Although the Council determined the PC49 submissions and further submissions that focused on the zoning of the Silverstream Spur to be out of scope, we are still required to make recommendations to the Council on these submissions and further submissions. We note this affects 12 submissions and 49 further submissions on PC49. Our recommendations on all PC49 submissions and further submissions, including those previously deemed as beyond the scope of PC49 are contained in **Appendix 1**.
29. Of the PC49 submissions that were not judged to be beyond the scope of the plan change, we summarise the key matters requested by submissions as follows:
 - (a) That the Natural Open Space Zone provisions should be broadened to consider the impact of development on indigenous biodiversity.
 - (b) That the Mangaroa Peatland¹² land be rezoned to Natural Open Space Zone.
 - (c) That the Pinehaven Tennis Club be rezoned to 'Sport and Active Residential Zone' (sic)¹³, or be provided with site-specific building height and floor area exclusions.
 - (d) That specific Open Space Zoned sites be rezoned to a different type of Open Space Zone e.g. Natural Open Space Zone rather than Sport and Active Recreation Zone¹⁴.
 - (e) That additional open space zoned land is identified across the City¹⁵.
 - (f) That the Hutt Valley Clay Target Club is not granted an extension to the maximum number of annual shooting days¹⁶.
 - (g) That the Sport and Active Recreation Zone provisions for building height, boundary setbacks, and gross floor area do not apply to the proposed rezoned Royal Wellington Golf Club site, and that the caretaker accommodation size is not limited.
 - (h) That errors within objectives, policies and rules are corrected so that there are no gaps for unintended consequences¹⁷.

¹² S1 – Graham Bellamy, S.17 – A.G. Spiers, and S.28 – Forest and Bird.

¹³ S2.1 and 2.2 – Pinehaven Tennis Club.

¹⁴ S5 – Helen Chapman.

¹⁵ S17 – A.G. Spiers.

¹⁶ S9 – Mangaroa Farms, and 12 – Jonh Hill.

¹⁷ S11 – Hannah Stanfield.

- (i) That amendments are made to provisions with respect to trip generation thresholds and the safety and efficiency of the transport network.
- (j) That the Sport and Active Recreation Zone provisions are amended to differentiate between public and private open space under this zoning¹⁸.
- (k) Amend the planning maps to replace the proposed Open Space and Recreation Zone from land at 146 and 150 Gillespies Road¹⁹ to a 'different zone' that enables:
 - (i) Ongoing use and upgrading, intensification or expansion of existing land use carried out on the site;
 - (ii) Permitting or controlling activities which are currently permitted or controlled on the site under the Operative District Plan;
 - (iii) General land use and development opportunities including but not limited to rural, residential, commercial, industrial, utility/services, and all forms of recreation (i.e. including motorised recreation);
 - (iv) Subdivision, access; and earthworks/excavation (including quarrying activities) associated with the abovementioned opportunities²⁰.
- (l) Amend the planning maps to limit the extent of the Natural Open Space Zone at 146 and 150 Gillespies Road so that it is contained within the active bed of the Hutt River, and rezone the balance land to an unspecified 'different zone' to enable the activities listed in (k)(i) – (iv) above.
- (m) Amend the provisions of the Natural Open Space Zone to enable the following within the riverbed part of the site at 146 and 150 Gillespies Road:
 - (i) Subdivision;
 - (ii) Access, infrastructure, and buildings or structures associated with the transportation or conveyance of people, goods, utilities, and services within or across the zone, including bridges and pipes;
 - (iii) Natural hazard protection and remediation (works and structures);
 - (iv) Earthworks (including rock/gravel extraction);
 - (v) Commercial recreation.²¹

¹⁸ S19 – Royal Wellington Golf Club.

¹⁹ Lot 2 Deposited Plan 52807; Pt Lot 2 Deposited Plan 58853; Lot 1 Deposited Plan 58853; Pt Lot 2 Deposited Plan 17413; Lot 1 Deposited Plan 10580; Lot 2 Deposited Plan 10580.

²⁰ S20 - Wooster and Teasdale families.

²¹ S20 - Wooster and Teasdale families.

- (n) Amend the provisions to provide for the safety and wellbeing of people and communities in the Open Space zones regarding water supply for firefighting purposes.²²
- (o) Amend the Natural Open Space Zone objectives, policies, and matters of discretion to include reference to, and consideration of, indigenous biodiversity values²³.

Variation 1

30. Variation 1 attracted 94 submissions and 25 further submissions. We summarise the key matters raised by submissions as follows:

- (a) Support for²⁴ and opposition to²⁵ rezoning the Silverstream Spur to Natural Open Space Zone.
- (b) Support and partial support for²⁶, and opposition to the proposed site-specific provisions for infrastructure. This includes:
 - (i) the principle²⁷ and effects of including the infrastructure provisions, including a road corridor through the Spur;
 - (ii) the identification of potential alternative routes to the Southern Growth Area that would avoid a road corridor through the Spur²⁸;
 - (iii) the proposal to include a transport corridor through the Spur is contrary to the definition of Natural Open Space Zone²⁹;
 - (iv) roading and transportation effects on the local road network from a road corridor through the Spur have not been considered³⁰;
 - (v) the community has not asked for a road corridor through the Spur for recreation purposes³¹;
- (c) The ecological values, extent, and role/function of the identified Significant Natural Area(s) on the Spur.³²

²² S24 – Fire and Emergency New Zealand.

²³ S26 – Greater Wellington Regional Council.

²⁴ Numerous submissions.

²⁵ S82 – The Guildford Timber Company.

²⁶ Examples include: S15 – Lisa Clephane, S82 – The Guildford Timber Company.

²⁷ S91 – Save Out Hills (Upper Hutt) Inc.

²⁸ Multiple submissions, examples include : S2 – Doug Fauchelle; S4 – Caroline Woollams; S8 – Craig Thorn, S9 – Duncan Stuart.

²⁹ S7 – Helen Chapman.

³⁰ Examples include: S7 – Helen Chapman; S13 – John D O’Malley; S49 – Rick Wheeler; S73 – Shayne Fairbrother;

³¹ Examples include: S10 – Logan McLean, S12 – Jonathan Board.

³² Multiple submissions, examples include: S35 – Graham Bellamy, S46 – Chris Cosslett, S49 – Rick Wheeler, S82 – The Guildford Timber Company, S79 – Upper Hutt Branch of the Royal Forest & Bird Society Inc.

- (d) The significance of, status, and need for the Southern Growth Area, and the need for a transport corridor to it via the Spur.³³
- (e) The requirement to give effect to the Regional Policy Statement for the Wellington Region 2013 (RPS) with respect to the indigenous biodiversity provisions.³⁴
- (f) The background to the current operative zoning of the Silverstream Spur site.³⁵
- (g) Requests to designate the Silverstream Spur site as a Reserve under the Reserves Act 1977.³⁶
- (h) There are other practicable options for the location of a future road to the Southern Growth Area that have not been considered.³⁷
- (i) The proposed provisions include contradictions within and between objectives and policies – including existing NOSZ objectives and policies.³⁸
- (j) There is no certainty on the scale of works, earthworks, and vegetation clearance enabled under NOSZ-S4.³⁹

Late Submissions Accepted

- 31. The Panel is granted the power to accept or reject any late submission by clause 98(3) of schedule 1 of the RMA. At the beginning of the hearing the Panel confirmed that it accepted all late submissions on the basis that no submitters or other persons would be unfairly prejudiced as a result of the late submissions being accepted.
- 32. Our decision also took into account the fact that the s42A report authors had considered and made recommendations on all late submissions. The Panel’s decision is recorded in Minute 4⁴⁰.

Withdrawal of Submission S18

- 33. We note that the Council received an email on 6 November from Mr John Ross on behalf of Silverstream Retreat (S18) advising the submission on Variation 1 was withdrawn, and the submitter no longer wished to be heard. We record this withdrawal in **Appendix 2**.
- 34. Submission 18 attracted ten further submissions as follows:
 - (a) FS8 – Helen Chapman (opposed S18)
 - (b) FS9 – Graham Bellamy (opposed S18)
 - (c) FS10 – Save Our Hills (opposed S18)

³³ S32 – Tom Halliburton, S42 – Pat van Berkel, S82 – The Guildford Timber Company.

³⁴ S19 – Greater Wellington Regional Council (officers submission), S74 – Royal Forest & Bird Protection Society Inc.

³⁵ S91 – Save Our Hills (Upper Hutt) Inc., S88 - Silver Stream Railway Inc.

³⁶ Multiple submissions including: S45 – John Pepper, S53 – Steven Robertson, S72 – Peter Ross.

³⁷ S74 – Forest & Bird at para. 10.

³⁸ S74 – Forest & Bird at para. 18(d).

³⁹ S74 – Forest & Bird at para. 18(e).

⁴⁰ <https://www.upperhuttcity.com/Home/Tab/Council/Your-Council/Plans-policies-by-laws-and-reports/District-Plan/PC49>

- (d) FS11 – Susan Kefali Pattinson (opposed S18)
- (e) FS12 – The Guildford Timber Company (supported S18 in part)
- (f) FS13 - Duncan Stuart (opposed S18)
- (g) FS16 – Forest & Bird (opposed S18)
- (h) FS19 – Silver Stream Railway Incorporated (opposed S18)
- (i) FS20 – Caleb Scott (opposed S18)
- (j) FS23 – Tony Chad (opposed S18)

35. There is no decision necessary from the Council on the withdrawal of the submission. We note the basis for the parts of the above further submissions that are specific to withdrawn submission S18 no longer exists. Our recommendations on submissions and further submissions in **Appendix 2** reflect this.

Request to file late planning evidence

36. Prior to the deadline set by the Panel for the provision of evidence in advance of the reconvened hearing, the Panel received an emailed request by Ms Tancock for a time extension for the provision of Mr Hall’s planning evidence. The request was refused by the Chair on the grounds that it would interfere with the scheduling of the hearing, which was already set.
37. Mr Hall did submit planning evidence on time, which the Panel has considered alongside all other evidence.
38. Notwithstanding the above, at the reconvened hearing, speaking notes were tabled for Mr Hall which in part addressed the matters covered in Mr Hall’s evidence⁴¹. However, the speaking notes also included a section titled ‘Additional Planning Evidence from the Legal Submissions’. This caused the Panel to take a pause in the hearing proceedings to review the material. The Panel concluded that this part of Mr Hall’s speaking notes appeared to be attempting to introduce additional evidence.
39. To ensure a fair process to all submitters and their experts, the Panel did not accept the late evidence provided in the “speaking notes of Mr Hall”. For the avoidance of doubt, the Panel records that it did review the additional information provided by Mr Hall in his speaking notes to check for consistency with Mr Hall’s evidence that was submitted on time, and for consistency with the submission of Guildford Timber Company.
40. The Panel did not find anything of material importance to the Panel’s consideration of the matters raised in the submission or the evidence that Mr Hall had already submitted within the timeframes directed by the Panel.

⁴¹ <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/reconvened-hearing/gtc-tabled-speaking-notes-of-mr-hall.pdf>

Post-Hearing Correspondence from Submitter

41. On the day before the reconvened hearing was to start, the Panel received written correspondence from Mr Pattinson in his capacity as President of Save Our Hills (Upper Hutt) Incorporated ⁴² objecting to Commissioner Muspratt being a member of the Panel.
42. Mr Pattinson expressed his opinion that Commissioner Muspratt's role as the independent planning expert appointed by the Council as its independent planner to consider submissions and make recommendations to the Independent Hearing Panel for the Council's IPI meant that Commissioner Muspratt would show bias against Mr Pattinson's submission on Variation 1 and PC49, and a bias in favour of the submission of the Guildford Timber Company on Variation 1.
43. The Chair explored the allegations in the letter, and carefully assessed whether there was any legitimate concern which needed to be addressed. She noted during the reconvened hearing that this was a procedural matter that would be addressed in the Panel's written deliberations.
44. In response to Mr Pattinson's allegations the balance of the Panel reviewed the s42A report and the right of reply prepared by Commissioner Muspratt in his role as independent planning expert for the Council's IPI. The Chair and Commissioner Kara-France observed that Commissioner Muspratt's planning evidence was prepared to a high professional standard and did not demonstrate bias towards any submitters or any other parties.
45. The Panel finds the objection made by Mr Pattinson to be entirely without merit. We recommend any parties interested in this matter to review the relevant documents prepared by Commissioner Muspratt for the Council's IPI in his role independent planning expert. All relevant documentation are available on the Council's IPI webpage.
46. The Panel records that allegations against an independent expert's professional integrity and impartiality are very serious. The Panel is disappointed that Mr Pattinson chose to wait until after the initial hearing had concluded to raise his concerns which relate to matters that occurred well in advance of the initial hearing. The relief sought by Mr Pattinson would have required the rehearing of the entire Plan Change and Variation process, with significant cost to all parties.

Conflicts of Interest Declarations

47. At the beginning of the initial hearing the Panel declared any perceived conflicts of interest as set out below.
48. As Greater Wellington Regional Council was a submitter on PC49 and Variation 1, Commissioner Muspratt declared that his wife had recently been appointed a role as a resource advisor in the consenting team at Greater Wellington Regional Council, with a start-date in October 2023. Commissioner Muspratt confirmed that the consenting team at the Regional Council was in a separate group from the policy team and therefore was not involved in the preparation of submissions on proposed plan changes. Commissioner

⁴² Received 2 April 2024.

Muspratt confirmed that the resource advisor role primarily involved the processing of discharge permits. Commissioner Muspratt confirmed that for these reasons he was satisfied that there was no actual conflict of interest in his consideration of the submissions by Greater Wellington Regional Council.

49. Commissioner Kara-France declared that she is a New Zealand Conservation Board Member, which is a Statutory Board Appointment, appointed by the Minister of Conservation. Commissioner Kara-France confirmed the position is not an employee of the Department of Conservation, and therefore there would be no conflict of interest should there be any submissions from the Department of Conservation.
50. Commissioner Kara-France also declared that she is an independent Hearing Commissioner on both Hearing Panels for the Wellington Regional Council - Regional Policy Statement Change 1 - Freshwater Planning Process (appointed by the Chief Freshwater Commissioner Judge Newhook), and Part 1 Schedule 1 (appointed by the Greater Wellington Regional Council. Commissioner Kara-France confirmed that the conflict would be managed by not participating in any Hearing Panel deliberations and decision concerning any submissions from the Wellington Regional Council.
51. Commissioner Wells confirmed she had no actual or perceived conflicts of interest.

Preliminary Considerations

Coalition Government's intention to suspend the requirement of the National Policy Statement on Indigenous Biodiversity 2023 to identify new SNAs

52. We have prepared this section on the basis that we consider this topic will be of interest to Council at the time of considering our recommendations.
53. At the time of preparing our recommendation report, the Panel was aware that the Coalition Government has signalled via the Resource Management (Freshwater and Other Matters) Amendments Bill 2024 that it intends to suspend the application of the NPS-IB with respect to the identification of new SNAs for a period of three years. This had not passed into law at the time of preparing our report, and therefore the requirements of the NPS-IB for the identification of SNAs under Variation 1 still apply.
54. Regardless of the future status of the above requirements of the NPS-IB, we note that the requirements of the RPS for the Wellington Region to identify and protect areas of significant indigenous vegetation and significant habitats of indigenous fauna will continue to apply, and will not be affected by the signalled changes to the NPS-IB.
55. Accordingly, we consider that the inclusion of the SNA on the Silverstream Spur site is required to proceed on its own merits as a method to give effect to the requirements of the RPS – regardless of any future changes to the NPS-IB.

Scope Issues and Relevant Tangential Matters

Scope

56. The Panel's scope to make recommended amendments to PC49 and Variation 1 provisions is generally limited to and bounded by the proposal itself as notified, matters raised in submissions, and any amendments necessary to give effect to any relevant national direction. All submitter presentations, evidence, and legal submissions to the Panel as part of the hearing process have been considered as providing additional context, explanation, and identifying potential alternative changes to the provisions that may address the concerns raised in submissions. The Panel has very carefully considered the scope of certain suggested amendments to understand whether they might fall outside of the bounds the scope of the Plan Change/Variation. This is important for both reasons of natural justice and practicality, as the Panel has been careful to avoid triggering the need for renotification. In our view, any additional information, evidence or legal submissions provided to the Panel at the hearing or after the original formal submissions process does not, in itself, extend the scope of the Panel's ability to make changes requested by submissions.
57. As part of our deliberations and consideration of the information and evidence presented to the Panel as part of the hearing process, including the Council right of reply, we have returned to consider the changes requested by submissions to ensure our recommendations do not venture beyond the scope provided by the submissions.

National Policy Statement for Indigenous Biodiversity 2023 (NPS-IB)

58. As national direction that came into force following the notification of PC49 and Variation 1, we requested information from the Variation 1 s42A report author to confirm whether the significant natural area within the Silverstream Spur site is deemed a SNA under the NPS-IB. We also received legal submissions on behalf of submitters commenting on this matter.
59. Based on the legal advice received⁴³, we consider the Silverstream Spur site to contain an SNA in terms of the NPS-IB, therefore triggering the requirement to give effect to some of the provisions of the NPS-IB as part of the Variation 1 process. We address this in detail below under the relevant topic headings for Variation 1.

Proposed Plan Change 50 – Rural Review

60. While considering submissions and hearing from submitters during the hearing it became clear that it would be useful for the Panel to understand the relationship between PC49, Variation 1, and the rural zone review proposed under PC50. This was to enable us to understand any relevant relationship between PC50 and the matters raised in submissions

⁴³ The legal advice submitted by the Council and the Guildford Timber Company both addressed this.

that referred to proposed rezoning of the rural zoned land to a ‘settlement zone’ in the vicinity of the Hutt Valley Clay Target Club.

61. As confirmed by the s42A report⁴⁴, PC50 proposes to introduce rezoning of surrounding sites and the inclusion of an overlay around the gun club site which would require new development within the acoustic overlay to meet relevant acoustic standards to maintain residential amenity considering the existing club activity.

The Intensification Planning Instrument

62. While considering PC49 and Variation 1 background material and viewing the current operative District Plan maps following the adjournment of the initial hearing on 30 November 2023 it became apparent to us that the Council’s Intensification Planning Instrument (IPI)⁴⁵ made changes to the zoning or overlays of a number of sites that are proposed to be rezoned via PC49 and Variation 1. These changes became operative after the initial hearing for PC49 and Variation 1. It can therefore be seen that the PC49 and Variation 1 processes have been complicated as a result of the mandatory fast-tracked changes and timeframes for the processing and finalisation of the IPI.
63. This timing issue resulted, in some instances, to recent changes to the zoning or precinct overlays of sites that were notified in PC49 and Variation 1 under their previous (now inoperative) zoning or precincts. To gain an understanding of this situation the Panel issued Minute 6⁴⁶ directing the Council s42A authors to provide the Panel with:
- A list of sites which are in PC49/Variation 1 and which have had zoning, precinct or overlay changes as a result of the IPI
 - PDF maps of the relevant sites that show the differences, and
 - A list of relevant submissions and further submissions from PC49 and/or Variation.
64. A response was provided to us on 9 February 2024 which confirmed the following sites were affected by changes made by the IPI:
- *Part of the 27 Blenheim Street - This was identified in the PC49 maps, notified in August 2021, as having a general industrial zoning. The IPI subsequently rezoned this site to mixed use when it became operative in December 2023.*
 - *Parts of the Silverstream Spur - In the Variation to PC49 (Silverstream Spur), which was notified in October 2022, part of this Silverstream Spur is proposed to be zoned as natural open space and an area of significant vegetation. These areas of the spur*

⁴⁴ At paragraphs 191-192.

⁴⁵ The mandatory Intensification Planning Instrument was made operative by the Council on 13 December 2023.

⁴⁶ <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/minute-6-ipi.pdf>

were zoned General Residential in the IPI, which was notified in August 2022 and became operative in December 2023.

65. With respect to 27 Blenheim Street, we note the zoning has been changed to Mixed Use Zone via the IPI. This removed the open space zone from part of the site, resulting in the operative status of the site being zoned entirely Mixed Use Zone. We identify the potential options available to Council to address this situation in due course.
66. With respect to the Council's advice set out above on the zoning of the Silverstream Spur under the IPI, we consider it is unclear and could be interpreted two different ways as follows:
 - (a) That under the IPI, when notified, part of the Silverstream Spur was already zoned General Residential Zone; or
 - (b) That the IPI changed the zoning of part of the Silverstream Spur - presumably from some other non-specified zone to General Residential Zone.
67. We find that the first interpretation to be correct. As we heard from submitters during the hearing questioning a potential change in zoning of the Silverstream Spur site via the IPI, we consider it is important to provide clarity on how we came to this finding, which we set out below.
68. As all IPI background material and the District Plan had been made available to us by the s42A report authors, we considered it was an important task for the Panel to record our observations on the background to the zoning of the Silverstream Spur. Considering the level of interest by submitters in the history of the zoning of the site and the historic events that led to the current situation, we endeavoured to understand the more recent background to the zoning of the Spur to ensure we were not overlooking any relevant matters.
69. We find that the IPI did not change the zoning of the Silverstream Spur. The Independent Hearings Panel for the IPI clearly set out that the zoning of the Silverstream Spur would not be changed via the IPI⁴⁷. This was to ensure the IPI did not interfere with and complicate the processing of PC49 and Variation 1⁴⁸.
70. For the benefit of interested submitters, we set out below in Table 1 our understanding of the recent chronology of PC49, Variation 1 and the IPI with respect to the recent historic, and current zoning of the Silverstream Spur site under Variation 1. This is followed by:

⁴⁷ At paragraph 25.64 of the Independent Hearing Panel's recommendation report: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/ipi/uhcc-panel-recommendation-report-intensification-planning-instrument.pdf>

⁴⁸ At Paragraph 25.65 of the Independent Hearing Panel's recommendation report.

- (a) A list of all sites that have been made known to us by the s42A authors where the zone was affected by the IPI, and a description of their operative zoning/precincts/overlays.
- (b) Our evaluation and findings on the implications for PC49 and Variation 1, and our recommendations on how the Council may choose to resolve any identified issues.

71. Upon setting out the above factual details, we make recommendations to Council setting out our view of the most appropriate course of action for these sites in the consideration of PC49 and Variation 1, and the relevant submissions.

Table 1: Chronology of Silverstream Spur zoning as relevant to Variation 1

Chronology of Silverstream Spur zoning as spatially relevant to Variation 1	
Process and timing	Zoning of Silverstream Spur site
Prior to making amendments to the District Plan to give effect to the National Planning Standards Zoning Framework Standard ⁴⁹ (covers the period up to 6 October 2021).	(1) Rural Hill Zone ⁵⁰ . (2) Residential Conservation Sub-zone ⁵¹ .
Notification of PC49 – 11 August 2021 (Prior to National Planning Standards amendments).	(1) Rural Hill Zone. (2) Residential Conservation Sub-Zone.
National Planning Standards Zoning Framework amendments made to District Plan (6 October 2021 ⁵²).	(1) General Rural Zone. (2) General Residential Zone. (3) Residential Conservation Precinct.
Notification of IPI. (notification 30 September 2022 ⁵³).	(1) General Rural Zone. (2) General Residential Zone. (3) The Residential Conservation Precinct was proposed to be removed.
Notification of Variation 1 (5 October 2022 ⁵⁴).	(1) General Rural Zone. (2) General Residential Zone.

⁴⁹ National Planning Standards (2019), Clause 8 – Zone Framework Standard.

⁵⁰ See pre-National Planning Standards District Plan Zone map 39:

https://upperhutt.prelive.opencities.com/files/assets/public/v/1/districtplan/maps/u_39.pdf

⁵¹ See pre-National Planning Standards version of the operative District Plan maps 39 and 40:

Map 39: https://upperhutt.prelive.opencities.com/files/assets/public/v/1/districtplan/maps/u_39.pdf

Map 40: https://upperhutt.prelive.opencities.com/files/assets/public/v/1/districtplan/maps/u_40.pdf

⁵² See 'Updates to the Operative District Plan': <https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/Operative-District-Plan-2004>

⁵³ Public notice: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/ipi/copy-of-public-notice.pdf>

⁵⁴ Public notice: https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/public-notice-lets_korero_pc49.pdf

	(3) Residential Conservation Precinct (although proposed for removal via the IPI, it was still in place at this time).
Operative IPI (operative 13 December 2023 ⁵⁵).	(1) General Rural Zone. (2) General Residential Zone. (3) Residential Conservation Precinct deleted.

72. The table above demonstrates a somewhat complicated and overlapping timeline with respect to recent changes to the District Plan relevant to the site. We therefore understand the confusion expressed by submitters during the hearing regarding recent zoning changes affecting of the site.
73. Based on the information made available to us via the IPI webpage, the District Plan webpage, and the PC49/ Variation 1 webpage, it is our understanding that:
- (a) The public notification of PC49⁵⁶ predates the Council giving effect to the Zone Framework Standard of the National Planning Standards⁵⁷. Therefore, the zoning of the Silverstream Spur site at the time of notification of PC49 was Rural Hill Zone and Residential Conservation Sub-zone.
 - (b) The mandatory National Planning Standards zoning amendments to the District Plan were made by Council under s.58I of the RMA⁵⁸ approximately 14 months after PC49 was publicly notified. This changed the zoning of the Silverstream Spur site to General Rural Zone and General Residential Zone. It is our understanding that the retention of Residential Conservation Sub-zone would not have complied with the mandatory zone standard of the National Planning Standards – hence the introduction of the *Residential Conservation Precinct* to retain the specific provisions for areas where this precinct applied.
 - (c) The public notification of the Council’s Intensification Planning Instrument occurred approximately 11 months after the National Planning Standards zoning amendments had been made, and approximately one week before the notification of Variation 1 to PC49. The IPI proposed to retain the General Rural Zone and the General Residential Zone on the Silverstream Spur site, but to delete the Residential Conservation Precinct. The proposed deletion of the Precinct did not have immediate legal effect from the date of public notification of the IPI.
 - (d) The public notification of Variation 1 to PC49 occurred approximately one week after the notification of the IPI. Amendments under the IPI to delete the Residential Conservation Precinct from the District Plan maps did not have immediate legal

⁵⁵ Common seal of UHCC making IPI operative:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/ipi/signed-common-seal-ipi-operative.pdf>

⁵⁶ 11 August 2021.

⁵⁷ <https://environment.govt.nz/assets/publications/national-planning-standards-november-2019-updated-2022.pdf>

⁵⁸ <https://legislation.govt.nz/act/public/1991/0069/latest/DLM7236205.html>

effect upon public notification of the IPI. Therefore, at the time Variation 1 was publicly notified the zoning of the site was General Rural Zone and General Residential Zone, and the Residential Conservation Precinct was still in place.

- (e) Upon the IPI being made operative on 13 December 2023, some 13 days after we finished hearing from submitters at the substantive PC49 and Variation 1 hearing, the operative zoning of the Silverstream Spur site was General Rural Zone and General Residential Zone. The Residential Conservation Precinct was no longer present in the operative District Plan.

- 74. On the assumption that our understanding on the recent zone history of the Silverstream Spur site as set out above is correct, we trust this provides greater clarity to the submitters who raised this as a matter of concern during the hearing.

Sites and relevant submissions affected by the IPI

- 75. As outlined above, the now operative IPI changed the zoning or removed precincts/overlays of a small number of sites that are proposed to be rezoned via PC49 and Variation 1. We issued Minute 6⁵⁹ requesting the Council to confirm the list of affected sites, accompanied by a PDF image of each site and a list of relevant submissions.

- 76. The Council responded confirming the sites and submissions affected⁶⁰. We have considered the information and maps provided by the Council. Based on the information before us we note the zoning of the following sites appear to have been affected by the IPI:

- (a) 27 Blenheim Street and 416 Maidstone Terrace;
- (b) 1223-1253 Fergusson Drive;
- (c) 150 Gillespies Road; and
- (d) 1 Railway Avenue.

- 77. In light of these more recent changes to the zoning of these sites we recommend that prior to making decisions on submissions, the Council confirms all sites that have been rezoned via the IPI and makes a decision on whether to formally withdraw any of the sites from PC49 via Clause 8D of Schedule 1 of the RMA⁶¹.

- 78. We note that in some instances, the proposed zoning under PC49 differs to the zoning changes made via the IPI. We consider that in these circumstances withdrawing the relevant sites from PC49 will avoid the potentially problematic situation where decisions on PC49 conflict with operative changes that were made to the District Plan via the Council's IPI.

⁵⁹ <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/minute-6-ipi.pdf>

⁶⁰ Council response to Minute 6:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/maps-for-hearing-panel-for-pc49-minute-6.pdf>

⁶¹ Clause 8D, Schedule 1, RMA: <https://legislation.govt.nz/act/public/1991/0069/latest/DLM241235.html>

79. In addition, it is the Panel’s understanding that if Council adopts our recommendation to formally withdraw any relevant sites from PC49, any submissions and further submissions relating to the rezoning of the sites will fall away and no further decision on them will be necessary. Should this approach be adopted by Council, we consider it may be beneficial for Council and submitters to update the recommendations in **Appendix 1** to reflect any withdrawals. We anticipate this is a matter the Council may wish to seek legal advice on.

National Policy Statement on Indigenous Biodiversity 2023 (NPS-IB)

80. The NPS-IB was gazetted and came into force ten months after the public notification of Variation 1. This timing, although unhelpful for our purposes, does not suspend the requirement for the Council to give effect to any relevant matters in the NPS-IB as part of the Variation process. We note that section 75(3)(a) of the RMA requires the district plan to give effect to, amongst other matters, a national policy statement.
81. As the Variation proposes to identify a significant natural area and to introduce specific provisions to protect and manage adverse effects on its indigenous biodiversity values, we turned our attention and questions during the hearing to which specific provisions of the NPS-IB are relevant to Variation 1.
82. The Council’s right of reply⁶² included advice on the relevance of the NPS-IB to PC49 and Variation 1. This was also a topic covered in part by legal submissions presented on behalf of submitters during the hearing.
83. Having considered the advice provided by the Council, and after considering the NPS-IB as part of our reading material, we consider the relevant policies and actions under the NPS-IB for Variation 1 are policies 3, 6, and 7. We find the relevant clauses to be clauses 3.4, 3.5, 3.7, 3.8, 3.10, 3.11, and 4.1. We discuss the most relevant clauses within the section of our report below where we address the relevant Variation 1 provisions.
84. The Panel has used its best endeavours, as informed by information provided by Council, submissions, and legal submissions provided during the hearings, to ensure our recommendations to Variation 1 provisions give effect to the requirements of the NPS-IB, as required by the RMA.

Operative Wairarapa-Wellington-Horowhenua Future Development Strategy 2024 (FDS)

85. A matter that arose during the hearing process was the status of the FDS. This regional strategy sets out Upper Hutt’s spatial plans for the location of urban growth over the next 30 years. With the FDS now approved⁶³, this provided us with clear direction on the application of relevant provisions under the NPS-UD and NPS-IB regarding the status of the Southern Growth Area as a location for planned future urban growth. Although not

⁶² Right of reply: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/right-of-reply-matters-for-pc49-final-17.05.24.pdf>

⁶³ Approved on 19 March 2024.

immediately obvious, this was important for our consideration on the application of the NPS-IB policy direction for the protection of the SNA within the Silverstream Spur.

86. As confirmed by Ms Rushmere in her right of reply, although the Southern Growth Area is referred to in the now outdated UHCC 2016 Land Development Strategy, the area is not identified as a site providing housing capacity in Upper Hutt over the next 30 years within the FDS prepared under the NPS-IB. We acknowledge this situation may change in the future, however at the time of our deliberations and preparing our recommendations to Council we consider the FDS provides clear direction on the application of the relevant national direction provisions that the Southern Growth Area is not currently an area that is planned for urban growth in the next 30 years.

Memorandum of Understanding between the Upper Hutt City Council and the Guildford Timber Company

87. We understand the interest in the memorandum of understanding expressed in submissions and by submitters during the hearing. Many submitters have raised concerns with the existence of the memorandum of understanding and the process under which it was entered in to. It is our understanding that the memorandum of understanding is no longer in place. Regardless, it is our firm view that a memorandum of understanding between the Council and the Guildford Timber Company, or any other party for that matter, is not a relevant matter to the Panel in carrying out our functions and making recommendations to the Council on PC49 and Variation 1.
88. The Panel received extensive historical information from submitters on the history of the Silverstream Spur in relation to its acquisition and zoning. Submitters also raised concerns about the process and existence of the previous Memorandum of Understanding with The Guildford Timber Company - this had proposed that the Spur site be exchanged with another owned by The Guildford Timber Company.
89. While the Panel understands that there has been a lot of energy expended over many years by people who have views or aspirations for the Spur's future, the Panel's role is clear and limited. In considering its recommendations to Council the Panel confirms that while it has reviewed those submissions, this issue is not relevant for the hearing and has played no part in forming the Panel's recommendations.

Hearings

90. Two hearings were required to ensure the Panel had sufficient information and evidence available to make recommendations to Council.
91. The initial hearing was held at Upper Hutt City Council over four consecutive days commencing 27 November and ending on 30 November 2023. The hearing was adjourned upon completion of hearing from submitters. A list of all appearances at the hearing is included in section 11 below.

92. The Panel had identified that there was likely to be a need for ecological witnesses to conference to assist the Panel, and it signalled that through minutes, as well as throughout the hearing. The Panel had signalled it would include Council's expert, Wildland Consultants Limited, as Council had relied on their evidence in preparation of the s32 and s42a reports for both PC49 and V1.
93. On Friday 15 December the Hearing Manager received an email from the legal advisor for submission S74 - Forest & Bird stating that it would not be appropriate for Council's proposed experts to be included in any conferencing as Council had not provided ecology evidence at the hearing.
94. The Panel deliberated on this matter and accepted that while Council had relied on existing ecological evidence in preparing Plan Change 49, it had not provided the Panel with ecological evidence that addressed the matters raised by submitters. Being mindful of the deadline for the hearings and looking for the most efficient and effective method to ensure it had all the relevant evidence, the Panel instructed Council to prepare ecology evidence, circulate it for comment to all submitters, and reconvene the hearing. The reconvened hearing was solely for the very specific purpose as set out in Minute 9⁶⁴ - to consider ecology matters. All submitters were notified, and offered the opportunity to participate in the reconvened hearing.
95. Minute 9⁶⁵ set out the Panel's decision to reconvene the hearing on 3 April 2024.

Directions and Minutes Issued

96. Certain matters were dealt with by procedural minutes issued by the Chair. The Panel issued a total of 12 minutes⁶⁶, which should be read in conjunction with this report. We do not address the content of all our minutes in this report, however we advise that they addressed a range of matters including but not limited to:
 - (a) Setting out our processes including the manner in which site visits would be conducted.
 - (b) Directing timeframes for hearings, the submission of expert evidence, and requesting timeframes for the lodgement of legal submissions.
 - (c) Setting out the procedures for the additional 'hearing within a hearing' specific to ecology matters.
 - (d) Responding to a number of procedural queries raised by submitters.

⁶⁴ Minute 9: <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/minute-9.pdf>

⁶⁵ Minute 9: <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/minute-9.pdf>

⁶⁶ All minutes are published on the PC49 and Variation 1 webpage:
<https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49>

- (e) Directing Council to provide additional ecology evidence to enable the Panel to thoroughly consider and make recommendations on the most appropriate extent of the SNA within the part of the Silverstream Spur affected by Variation 1.
- (f) Setting out the timeframe for the provision of the Council's right of reply.
- (g) Closing the hearing.

10.0 Outline of Report

97. Although interrelated, the matters raised in submissions on PC49 and Variation 1 have distinct points of separation, with Variation 1 being specific to one site. We therefore separate our discussion and recommendations in this report below on PC49 and Variation 1 to ensure legibility for readers and to streamline the statutory processes following the release of the Council's decisions.

Evaluation of Key Issues in Contention

98. Although our report covers a wider range of issues than those listed below, the Panel considers the key issues of contention for PC49 and Variation 1 can be summarised as:
- (a) The number of days the Clay Target Club would be authorised to operate as a permitted activity under the proposed site-specific provisions within PC49.
 - (b) Site-specific rezoning requests for sites that were not included in PC49.
 - (c) The suitability of the provisions that would apply to the Royal Wellington Golf Club site following its rezoning under PC49, and the lack of scope within submissions to address the concerns of the landowner.
 - (d) Requests for transportation-specific and firefighting provisions.
 - (e) The appropriateness and effectiveness of provisions that propose to enable a transport corridor and associated network utility infrastructure within the Silverstream Spur site.
 - (f) The values and extent of the SNA within the Silverstream Spur site.
 - (g) Objective and policy wording.
 - (h) The appropriateness and effectiveness of proposed rules and policy direction specific to the Silverstream Spur site.
99. Our discussion, evaluation and recommendations on all matters raised in submissions follows a logical chronology under specific topic headings below.

Statutory Evaluation

100. The statutory evaluations for PC49 and Variation 1 were provided with the section 32 evaluation reports. The statutory evaluation component was updated by s42A report authors as part of the hearing process and via the right of reply. We do not revisit or reproduce that work in our report, but provide a brief summary below.
101. When changing the District Plan the Council must:
- (i) give effect to any National Policy Statement, the New Zealand Coastal Policy Statement and the Regional Policy Statement for the Wellington Region.*
102. We have endeavoured to ensure PC49 and Variation 1 provisions give effect to the relevant national policy statements being the NPS-UD, NPS-IB, and the NPS-FM. The most relevant to our consideration has been the NPS-IB and the NPS-UD on account of the Silverstream Spur containing an SNA, and PC49 and Variation 1 proposing to rezone land within an urban environment.
103. The NPS-FM and other national policy statements have been considered but are not as directive or relevant to the matters before us on PC49 and Variation 1.
- (ii) Have regard to any proposed RPS.*
104. We have had regard to Proposed Change 1 to the Regional Policy Statement that is currently still progressing through the formal plan change processes. In particular we have had regard to the provisions relevant to biodiversity and urban development. We consider that there is too much uncertainty regarding the final form of RPS provisions following the plan change processes currently underway. Notwithstanding this, we do not consider PC49 or Variation 1 to be contrary to the direction provided by Proposed RPS Change 1.
- (iii) have regard to any management plans and strategies under any other Acts and to any relevant entry on the NZ Heritage List and to various fisheries regulations (to the extent relevant), and to consistency with plans and proposed plans of adjacent authorities;*
 - (iv) take into account any relevant planning document recognised by an iwi authority;*
 - (v) not have regard to trade competition;*
 - (vi) be in accordance with any regulation.*
105. PC49 includes a bespoke rule pertaining to the Blockhouse Site, which is a Category 1 Historic Place on the NZ Heritage List. Heritage New Zealand Pouhere Taonga made a submission supporting the proposed rule. There are no other NZ Heritage List entries relevant to PC49 or Variation 1 known to us.
106. As set out in the section 32 evaluation reports, relevant Council strategies and management plans prepared under the Local Government Act have had regard given to them. We do not repeat the detail of these here, but note relevant documents include the Open Space Strategy (2018), Land Use Strategy (2016), Long Term Plan, Sustainability

Strategy (2020), Toitū Te Whenua Parks Network Plan (2020), and UHCC Reserve Management Plans.

107. We are advised there are currently no management plans recognised by an iwi authority.
108. We confirm that no matters of trade competition have arisen, and that PC49 and Variation 1 provisions are not affected by any relevant regulations.

(vii) Any emissions reduction plan and national adaptation plan prepared under the Climate Change Response Act 2002.

109. The s42A reports for PC49 and Variation 1 both provided advice on whether there are any relevant provisions within the operative emissions reduction plan or the national adaptation plan. We concur with the advice provided in the s42A reports that plans are of limited relevance to PC49 and Variation 1.

RMA Part 2

110. Part 2 (sections 5-8) of the RMA sets out the purpose and principles of the Act. Part 2 is overarching, and the assessments required under other sections of the Act are subject to it. In order to recommend that PC49 and Variation 1 be approved in their recommended form, the Panel must be able to conclude that they will promote the sustainable management of natural and physical resources (purpose of section 5 of the Act). The operative District Plan was developed under this same RMA framework, and Council is required to ensure all proposed changes to the Plan will also result in outcomes which meet this statutory purpose.
111. Without visiting in detail sections 5-8 of the RMA, or repeating information from the s32 evaluation reports, we provide our summary below of how PC49 and Variation 1, as amended, are consistent with Part 2 of the RMA.
112. We find that PC49 will meet the purpose and principles of the Act, as set out within the higher-level regulatory planning framework as it responds to national direction in the form of the National Planning Standards Zone Framework Standard, by rezoning open space zoned land to accurately reflect the existing and intended future open space uses of each site. We consider that provisions proposed for each type of open space zone are consistent with the zone framework standard description of the National Planning Standards. We consider that PC49 will ensure the open space network within the City is appropriately defined and provided for, and this will assist the Council in the development of well-functioning urban environments in accordance with the NPS-UD.
113. Regrettably, after careful consideration we find that Variation,1 as notified, would not achieve Part 2 of the RMA because it proposed to put in place a site-specific management framework that did not take into account and address in a technical sense other relevant rules and policies from the Operative District Plan, and the policies proposed by PC49 for the Natural Open Space Zone. We discuss this in detail in section 13 of our report below. If

left unaddressed, this would have resulted in situations where proposed rules would have been ineffective due to them being overridden by existing operative higher level rules. This situation was also likely to have resulted in situations where proposed Variation 1 policies may be in direct conflict with directive policies proposed by PC49. The Panel was unable to identify sufficiently clear scope to resolve these conflicts while retaining the site-specific provisions for an infrastructure corridor.

114. The Panel has made a number of significant recommended amendments to Variation 1 provisions that we consider will address these technical issues which we discuss in greater detail in section 13 of our report below. We consider that our recommended amendments will ensure that the Variation is consistent with Part 2 of the RMA.
115. We also recommend amendments to Variation 1 provisions to give effect to the NPS-IB. We acknowledge this situation could not have been anticipated and addressed by Council when the Variation was publicly notified due to the timing of the NPS-IB coming into force. We thank Ms Rushmere, Council's legal advisor, submitters, and submitter evidence and legal submissions in assisting us in identifying many of the relevant provisions of the NPS-IB that we consider Variation 1 must give effect to.

Appendices

116. There are six appendices to this report. These are:

- **Appendix 1** – Final Panel Recommendations on PC49 Submissions.
- **Appendix 2** – Final Panel Recommendations on Variation 1 Submissions.
- **Appendix 3** – Final Panel Recommended PC49 Provisions.
- **Appendix 4** – Final Panel Recommended Variation 1 Provisions.
- **Appendix 5** – Final Panel Recommended PC49 District Plan Maps.
- **Appendix 6** - Section 32AA Evaluations.

11.0 Plan Change and Variation Processes

Background information & Section 32 Evaluations

117. In summary, PC49 was prepared to rezone the City's open space zoned sites to align them with the zone descriptions specified by the National Planning Standards, and to provide suitable provisions for each proposed open space zone to enable appropriate activities. This required the existing Open Space Zone being split into the Natural Open Space Zone, the Open Space Zone, and the Sport and Active Recreation Zone.

118. As described in the s32 evaluation report for PC49⁶⁷, the preparation of the plan change included consultation and engagement took place with affected landowners and occupying groups. Consultation already undertaken as part of the development of the Open Space Strategy was considered to provide the plan change with a strong evidence base for understanding the needs of the community and their aspirations for the open space network.
119. As covered in the s32 evaluation report for Variation 1, the variation was prepared in response to many submissions requesting the Silverstream Spur site be included as rezoned via PC49, but were found to be beyond the scope of PC49.
120. The objectives of PC49/Variation 1, the statutory evaluation, record of consultation, the evaluation of benefits, costs, and alternative methods were included in the respective s32 evaluation reports in accordance with s32 of the RMA. Please see the s32 evaluation reports for more information.

Notification and Submissions

121. PC49 and Variation 1 were publicly notified for the submissions and further submissions periods in accordance with the RMA. The s42A reports for PC49 and Variation 1 both provide details on the notification process and number of submissions received. We do not repeat this information in our report, but in summary:
- (a) PC49 attracted 27 submissions and 52 further submissions. This included two incomplete further submissions.
 - (b) Variation 1 attracted 94 submissions and 25 further submissions. This included one incomplete further submission.

The Hearing

122. The hearing commenced on 27 November 2023. Then followed:

Day 1:

- (1) For Council:
 - a. Ms Suzanne Rushmere (Planning), s42A report author for PC49; and
 - b. Ms Emily Thomson (Planning), s42A report author for Variation 1.
- (2) For Royal Forest and Bird⁶⁸:
 - a. Mr Tim Williams (legal);
 - b. Dr Maseyk (ecology); and
 - c. Ms Amelia Geery.
- (3) Mr Graham Bellamy.⁶⁹

⁶⁷ S32 evaluation report, at 4.3.1:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/pc49-section-32-report.pdf>

⁶⁸ Submission 23 (PC49); Submission 74 (Variation 1).

⁶⁹ Submission 1 and Further Submission 2 (PC49); Submission 35 and Further Submission 9 (Variation 1).

(4) Mr Pat Van Berkel.⁷⁰

Day 2:

(5) Mr Bob McLellan.⁷¹

(6) Dr Abbie Spiers.⁷²

(7) Ms Heather Blissett.⁷³

(8) Mr Donald Skerman.⁷⁴

(9) For Silver Stream Railway⁷⁵:

a. Mr Jason Durry⁷⁶; and

b. Mr Simon Edmonds⁷⁷.

(10) Ms Mary Beth Taylor.⁷⁸

(11) Mr Tony Chad.⁷⁹

(12) Mr Caleb Scott.⁸⁰

(13) Mr David Grant-Taylor.⁸¹

(14) Mr Rhys Lloyd.⁸²

(15) Mr Ian Sherwin.⁸³

Day 3:

(16) For Guildford Timber Company⁸⁴:

a. Ms Pherne Tancock (Legal);

b. Dr Vaughan Keesing (Ecology);

c. Dr Derek Foy (Economics);

d. Mr Michael Hall (Planning); and

e. Mr Phillip Read (Infrastructure).

(17) For Save Our Hills (Upper Hutt)
Incorporated:⁸⁵

a. Mr Stephen Pattinson.

(18) Ms Susan Kefali-Pattinson.⁸⁶

⁷⁰ Further Submission 5 (PC49); Submission 42 and Further Submission 4 (Variation 1).

⁷¹ Submission 41 (Variation 1).

⁷² Submission 17 (PC49); Submission 50 (Variation 1).

⁷³ Submission 69 and Further Submission 5 (Variation 1).

⁷⁴ Submission 48 (Variation 1).

⁷⁵ Submission 27 and Further Submission 13 (PC49); Submission 88 and Further Submission 19 (Variation 1).

⁷⁶ Mr Durry is also Further Submitter 33 (PC49), and Submitter 55.

⁷⁷ Mr Edmonds is also Submitter 86 (Variation 1).

⁷⁸ Submission 10 and Further Submission 8 (PC49); Submission 71 and Further Submission 24 (Variation 1).

⁷⁹ Submission 13 and Further Submission 12 (PC49); Submission 77 and Further Submission 23 (Variation 1).

⁸⁰ Further Submission (PC49); Submission 78 and Further Submission 20 (Variation 1).

⁸¹ Further Submission 44 (PC49); and Submission 87 (Variation 1).

⁸² Further Submission 37 (PC49); and Submission 90 (Variation 1).

⁸³ Further Submission 4 (PC49).

⁸⁴ Further Submission 24 (PC49); Submission 82 and Further Submission 12 (Variation 1).

⁸⁵ Submission 14 and Further Submission 14 (PC49); Submission 91 and Further Submission 10 (Variation 1).

⁸⁶ Further Submission 48 (PC49); Further Submission 11 (Variation 1).

(19) Mr John D O'Malley.⁸⁷

Day 4:

(20) For Royal Wellington Golf Club⁸⁸:

a. Mr Dylan Lindstrom; and

b. Mr John McLean.

(21) Mr Ian Price.⁸⁹

(22) Mr Peter Ross.⁹⁰

(23) Mr John Hill.⁹¹

(24) Mr Bruce Scott.⁹²

123. Upon completion of hearing from submitters the Chair confirmed that the Panel would be issuing procedural minutes following the hearing. The hearing was then adjourned.

124. As previously discussed, the Panel issued Minute 9⁹³ directing that the Council provide ecology evidence for the Silverstream Spur site. The Minute set out the process and timeframes, allowing for all submitters to consider this new ecological evidence and update their submissions if desired. Another hearing was arranged to hear from the ecology experts and submitters solely on ecology matters.

125. A one-day hearing specific to ecology matters commenced with a Karakia on 3 April 2024. Then followed:

(1) For Council:

a. Ms Suzanne Rushmere (Planning), s42A report author for PC49 and updated s42A report for Variation 1.

b. Mr Goldwater (Ecology), Wildland Consultants Limited, Council's ecology expert.

(2) For Guildford Timber Company⁹⁴:

a. Ms Pherne Tancock (Legal);

b. Dr Vaughan Keesing (Ecology); and

c. Mr Michael Hall (Planning).

(3) For Royal Forest and Bird⁹⁵:

a. Mr Tim Williams (legal).

⁸⁷ Further Submission 6 (PC49); Submission 23 (Variation 1).

⁸⁸ Submission 19 (PC49).

⁸⁹ Further Submission 47 (PC49); Submission 26 (Variation 1).

⁹⁰ Further Submission 3 (PC49); Submission 72 and Further Submission 18 (Variation 1).

⁹¹ Submission 12 (PC49).

⁹² Mr Scott was not a submitter but was granted permission to speak and answer questions from the Panel with respect to the Hutt Valley Clay Target Club.

⁹³ Panel Minute 9: <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/minute-9.pdf>

⁹⁴ Further Submission 24 (PC49); Submission 82 and Further Submission 12 (Variation 1).

⁹⁵ Submission 23 (PC49); Submission 74 (Variation 1).

- (4) Mr Donald Skerman.⁹⁶
- (5) Mr David Grant-Taylor.⁹⁷
- (6) Mr Caleb Scott.⁹⁸
- (7) Mr Simon Edmonds⁹⁹.
- (8) Mr Graham Bellamy.
- (9) For Silver Stream Railway¹⁰⁰:
 - a. Mr Jason Durry¹⁰¹.
- (10) Mr John D O'Malley¹⁰².
- (11) Ms Susan Kefali-Pattinson.¹⁰³
- (12) For Save Our Hills (Upper Hutt) Incorporated:¹⁰⁴
 - a. Mr Stephen Pattinson.
- (13) Ms Mary Beth Taylor.¹⁰⁵
- (14) Mr Pat Van Berkel.¹⁰⁶

126. Upon completion of hearing from submitters the Chair confirmed that the Panel would be issuing procedural minutes following the hearing, and that Council's right of reply would be accepted by the Panel in writing following the hearing. The hearing was then adjourned.

12.0 Plan Change 49

Silverstream Spur Rezoning Requests

Background

127. Our discussion on Variation 1 within this section of our report is limited to setting out the high-level background to the relevant submissions on PC49 that request the rezoning of the Silverstream Spur.
128. As explained in the PC49 s42A report¹⁰⁷, a strong theme from submissions and further submissions on the plan change was the request that the site known as the Silverstream Spur be zoned for open space purposes. This request came from 11 submissions¹⁰⁸ and all but one of the further submissions.

⁹⁶ Submission 48 (Variation 1).

⁹⁷ Further Submission 44 (PC49); and Submission 87 (Variation 1).

⁹⁸ Further Submission (PC49); Submission 78 and Further Submission 20 (Variation 1).

⁹⁹ Mr Edmonds is also Submitter 86 (Variation 1).

¹⁰⁰ Submission 27 and Further Submission 13 (PC49); Submission 88 and Further Submission 19 (Variation 1).

¹⁰¹ Mr Durry is also Further Submitter 33 (PC49), and Submitter 55.

¹⁰² Further Submission 6 (PC49); Submission 23 (Variation 1).

¹⁰³ Further Submission 48 (PC49); Further Submission 11 (Variation 1).

¹⁰⁴ Submission 14 and Further Submission 14 (PC49); Submission 91 and Further Submission 10 (Variation 1).

¹⁰⁵ Submission 10 and Further Submission 8 (PC49); Submission 71 and Further Submission 24 (Variation 1).

¹⁰⁶ Further Submission 5 (PC49); Submission 42 and Further Submission 4 (Variation 1).

¹⁰⁷ At para 64.

¹⁰⁸ Submissions S1.1 – Graham Bellamy; S3.1 – Jonathan Board; S4.1 – Doug Fauchelle; S6.1 – Sean Kusel;

129. As discussed previously in this report, following receipt of submissions on PC49 Council determined that all submissions and further submission that requested changes to the zoning of the Silverstream Spur were out of scope of PC49. The s42A report notes¹⁰⁹ that this determination was based on PC49 specifically identifying the Silverstream Spur as being out of scope of the plan change.
130. The Council then prepared and publicly notified Variation 1 to PC49 which specifically addressed the zoning of the Council-owned portion of the Silverstream Spur, and proposed to incorporate site-specific provisions.

Submissions

131. The 11 submissions opposing PC49 and requesting the rezoning of the Silverstream Spur to Natural Open Space Zone provided a variety of reasons which we summarise as including:
- (a) Opposition to the existing zoning.
 - (b) The need for additional open space for biodiversity and for community use.
 - (c) The land was originally purchased by the Council to be a reserve around 1990 to ensure its visual amenity for the community, but open space zoning to reflect this purpose has not yet occurred. Council should give effect to the original intent when it purchased the site¹¹⁰.
 - (d) The Silverstream Spur is of ecological importance being utilised for wildlife migration and as a bird corridor, providing an important linkage between other green spaces in the area. Council should focus on enhancing native flora and fauna on the Silverstream Spur.
 - (e) The Silverstream Spur should not be developed for any residential purposes and should be used for conservation and recreation purposes exclusively.
 - (f) The Silverstream Spur should be protected as an open space for recreation purposes.
 - (g) The Silverstream Spur defines the entry to Upper Hutt and is an iconic landscape that should be protected and maintained.
132. A further submission by Guildford Timber Company Ltd¹¹¹ was made in partial support of the 11 submissions with respect to the request to rezone the Silverstream Spur to Natural Open Space Zone. This partial support was only provided on the basis that:

S7.1 – Cameron Seay; S10.4 – Mary Beth Taylor; S13.1 – Tony Chad; S14.1 – Save Our Hills (Upper Hutt) Inc.; S17.3 – A. G. Spiers; S23.6 – Royal Forest and Bird Protection Society of New Zealand Inc. (Forest & Bird); S27.1 – Silver Stream Railway Inc.

¹⁰⁹ At Section 5.2, para 78.

¹¹⁰ S27.1 – Silver Stream Railway Inc; and S14.1 – Save Our Hills (Upper Hutt) Inc.

¹¹¹ FS23 – The Guildford Timber Company Ltd.

any rezoning of the Spur to open space does not compromise the ability to provide for a future road and associated infrastructure through / on the Spur, to enable potential future residential development at Silverstream Forest.

133. To this end, the Guildford Timber Company Ltd's further submission sought that, in addition to rezoning the Silverstream Spur to Natural Open Space Zone, that provision be made for an as yet undefined roading corridor through the site to allow access to the area of land referred to as the Southern Growth Area.

Council Evidence and Response to Submissions

134. The recommendation of Ms Rushmere was to reject all submissions and further submissions that request that PC49 be amended to include the rezoning of the Silverstream Spur site. Ms Rushmere advised that this recommendation is on the basis that PC49 was prepared to specifically exclude the site, and as a consequence the submissions and further submissions are beyond the scope of PC49.

Discussion and Recommendation

135. As Variation 1 was notified in response to the submissions and further submissions that were considered by the Council to be out of scope of PC49, it is perhaps unsurprising that we did not hear from any submitters specifically regarding their original submissions on PC49 and their requests to include the Silverstream Spur in the plan change.
136. We have considered the section 32 evaluation that supported the public notification of PC49 and note that at paragraph 7.9.7 it states:

Of particular relevance is the Southern Growth Area within Pinehaven, which has also been identified within the Open Space Strategy. At this point in time, there is uncertainty over the future development form of this area, and how the growth area will be addressed. Due to the uncertainty over this area and the direction from Council, the zoning of this area is considered to be out of scope and will be considered in a future plan change.

137. On this basis, it is clear to us that PC49 was indeed prepared to exclude the entire Southern Growth Area¹¹², including the Council-owned portion of the Silverstream Spur site that was subsequently proposed to be rezoned via Variation 1.
138. We agree with Ms Rushmere that the submissions and further submissions requesting that PC49 be amended to include the Silverstream Spur are beyond the scope of the plan change. Accordingly, we recommend the submissions and further submissions be rejected for the reasons set out above and in **Appendix 1**.

¹¹² As identified and described in the Upper Hutt Land Use Strategy 2016:
<https://www.upperhuttcity.com/Home/Tab/Council/Your-Council/Plans-policies-by-laws-and-reports/Strategies/Land-Use-Strategy>

Site Specific Rezoning Requests

139. As set out below a number of submissions requested rezoning of specific sites. Three submissions also requested additional rezoning of land in general to provide an increased resource of Open Space zoned land.

Land Adjacent to Kurth Crescent Reserve

Background

140. PC49 proposes to rezone this land from Open Space Zone to Sport and Active Recreation Zone.

Submissions

141. Submission S5.1 – Helen Chapman requested the site be rezoned to Natural Open Space Zone on account of the indigenous flora and fauna present on the site that is highly valued. The submission considered that a Natural Open Space zoning would ensure the protection of these values. This submission is supported by further submission FS8 – Mary Beth Taylor who adds that the site is steep and unsuitable for recreational use and may be subject to hazards under PC47.

Council Evidence and Response to Submissions

142. The s42A report prepared by Ms Rushmere noted that land is directly adjacent to the Silverstream Bowls and Pétanque Club site and is located within the same reserve. Ms Rushmere advised that the zoning approach for this area of land has been focused on the activities occurring at the site, which most closely aligns with the Sport and Active Recreation Zone. She considered that although there is native bush present, this is not sufficient to justify a Natural Open Space zoning of the parcel due to the overall character of that land and the relationship with club activities occurring on the site. Furthermore, Ms Rushmere noted that the District Plan has other relevant provisions to protect indigenous vegetation.

Discussion and Recommendation

143. Although we understand submission S5.1 – Helen Chapman’s reasons for requesting Natural Open Space zoning of this part of the reserve, we agree with Ms Rushmere that the Sport and Active Recreation Zone is the most appropriate zoning taking into account the activities carried out within the reserve. The Panel also agrees that the District Plan contains provisions specific to the protection of indigenous vegetation, and we also add that zone provisions in themselves do not protect vegetation.
144. We therefore recommend that submission S5.1 – Helen Chapman be rejected for the reasons set out above and in **Appendix 1**, and that the site be rezoned as notified and contained in **Appendix 5**.

Mangaroa Peatland

Submissions

145. Submissions S1.2 – Graham Bellamy, S17.4 – A.G. Spiers, and S23.5 – Forest & Bird requested the rezoning of the Mangaroa Peatland and the existing valley floor sub-zone of the Mangaroa Valley be amended to Natural Open Space Zone. These submissions were collectively supported by eleven further submissions, who considered that the Mangaroa peatland are a treasure and area one of its kind and size in the lower North Island. Further submitters considered the rezoning would be the first step in protecting the area.
146. The submissions were opposed by FS7 -Greater Wellington Regional Council (GWRC) on the basis that the further submitter considered that it is unusual to zone private land as open space, and the implications for existing Mangaroa residents would need to be understood and mitigated. The further submission considered that re-zoning is probably not the right mechanism to protect wetlands.

Council Evidence and Response to Submissions

147. In the s42A report, Ms Rushmere noted that although there is no prevention of zoning private land as Open Space, there still needs to be consideration on what is the most appropriate zoning for the land. Ms Rushmere advised that it is not common planning practice to zone private land as an Open Space Zone where that land has no recreation or leisure use, or is characterised by private residences or farming activities¹¹³. With respect to Natural Open Space zoning, Ms Rushmere considered that the zoning of private land as Natural Open Space is only appropriate in limited circumstances with the agreement of the landowner or when within an active river corridor¹¹⁴.
148. In summary, Ms Rushmere advised that a review of current planning practice undertaken during the development of PC49 identified that this approach is consistent with the approach taken by other district plans to the zoning of open spaces. Ms Rushmere also advised that the approach taken by PC49 was to only zone private land as Open Space where the purpose aligned with the Open Space and Recreation Zones, based on the land being publicly accessible and used for recreational purposes. Further, Ms Rushmere advised that this definition aligns with how Open Space is identified within the Upper Hutt Open Space Strategy 2018-2028, and that PC49 sought to align the District Plan with the Strategy¹¹⁵.
149. Accordingly, Ms Rushmere recommended the submissions requesting the rezoning of the Mangaroa peatland and valley floor be rejected.

¹¹³ At para. 98: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/s42a-report-final.pdf>

¹¹⁴ S42A report, at para. 108.

¹¹⁵ At para. 99.

Discussion and Recommendation

150. Although we understand the reasons for the submitters' desire to see the Mangaroa peatland and valley floor formally recognised and given some form of protection, we agree with Ms Rushmere that rezoning the site to Natural Open Space Zone would not be the most appropriate method to achieve this. We are also mindful that affected property owners have not agreed to the requested rezoning, and that rezoning the land may have an impact on their ability to use their properties. We consider that any potential future rezoning of the affected properties should be carried out with direct consultation with all affected property owners to identify the most appropriate method to protect the peatland.
151. We recommend the Mangaroa peatland and valley floor are not rezoned to Natural Open Space as part of PC49, and that the relevant submissions be accepted, accepted in part, or rejected for the reasons set out above and in **Appendix 1**.

Wooster and Teasdale Families – Gillespies Road

Background

152. PC49 proposes the rezoning of parts of the sites located at 150 and 146 Gillespies Road to apply to the most appropriate zoning to those parts of these sites that are currently zoned Open Space Zone.

Submissions

153. Submissions S20.1 and S20.2 - Wooster and Teasdale Families, requested that PC49 amends the Natural Open Space zoning so it is limited to the active bed of Te Awa Kairangi / The Hutt River, and to rezone the balance land to 'a different zone' to enable a range of specific activities and development. The range of activities and development the submission requested be enabled comprise¹¹⁶:
- (c) Ongoing use and upgrading, intensification or expansion of existing land use carried out on the site;
 - (d) Permitting or controlling activities which are currently permitted or controlled on the site under the Operative District Plan;
 - (e) General land use and development opportunities including but not limited to rural, residential, commercial, industrial, utility/services, and all forms of recreation (i.e. including motorised recreation);
 - (f) Subdivision, access; and earthworks/excavation (including quarrying activities) associated with the abovementioned opportunities.

¹¹⁶ As set out in section 3(a)(i)-(iv) of the submission, at page 1.

154. The submission included the specific legal descriptions that are requested to be rezoned¹¹⁷.
155. Submissions S20.1 and S20.2 were opposed by FS7 – Greater Wellington Regional Council on the basis that the further submitter considered that areas outside of the active bed of the riverbed are within the floodplain and are a high hazard area. The further submission noted that the land is flood and erosion-prone and could be subject to ongoing fluvial processes, and therefore the only appropriate use is open space.

Council Evidence and Response to Submissions

156. The s42A report prepared by Ms Rushmere advised that the general approach taken by PC49 was to only zone private land as Open Space where the purpose aligned with the Open Space and Recreation Zones, based on the land being publicly accessible and used for recreational purposes¹¹⁸. However, Ms Rushmere also advised that sites that are located within the river corridor may also be considered appropriate for Open Space zoning¹¹⁹, and that this approach is consistent with legal advice, other district plans, and best planning practice.
157. Ms Rushmere also considered that this approach to the zoning of open spaces is consistent with the zone purpose as contained in the National Planning Standards¹²⁰.
158. With regard to the Wooster and Teasdale Families site, Ms Rushmere advised that she considered the proposed zoning under PC49 is appropriate but noted a small area of land on the southern boundary of Pt Lot 2 DP 58853 on the southern edge of the river did not have the existing Open Space zoning removed, even though it is not within the riverbed of Te Awa Kairangi / The Hutt River. Ms Rushmere accordingly recommended this area be rezoned to General Rural Zone to be consistent with the zoning of adjacent land.
159. Ms Rushmere did not recommend any additional amendments to the zoning of the site in response to submissions S20.01 and S20.2.

Information or Evidence Presented at the Hearing

160. The submitter did not attend the hearing or provide any additional information or evidence in advance of the hearing.

Discussion and Recommendation

161. As a general comment regarding the request to rezone these sites, the Panel notes that apart from limiting the Natural Open Space Zone to the active bed of the river, the submission does not clarify the specific zoning that is requested to enable the range of activities and development sought by the submission – referring simply to ‘a different zone’

¹¹⁷ Legal descriptions: Lot 2 Deposited Plan 52807; Pt Lot 2 Deposited Plan 58853; Lot 1 Deposited Plan 58853; Pt Lot 2 Deposited Plan 17413; Lot 1 Deposited Plan 10580; and Lot 2 Deposited Plan 10580.

¹¹⁸ At para. 99.

¹¹⁹ At para. 100.

¹²⁰ At para 102.

that enables the activities and development that are sought to be ‘enabled’ on the site¹²¹. This provides little direction to the Panel on which zone would be the submitter’s preference – noting that based on the Panel’s understanding of the District Plan, none of the activities appear to be prohibited activities in any zone. As we did not receive any additional information or evidence from the submitter on this, we remain uncertain as to the specific zone the submission requests.

162. The Panel also notes that some of the land subject to the submission has since been rezoned via the Council’s IPI. Due to the lack of clarity within the submission itself, which was confounded by the rezoning that appeared to have occurred via the IPI after the notification and submission period for PC49, we requested Ms Rushmere to provide additional information to the Panel¹²² to:

- (a) Confirm the sites had a change in zoning via the IPI; and
- (b) Provide maps of the relevant sites showing the differences.

163. A response to Minute 6 was provided by the Council identifying all zone changes to the site under the IPI against those proposed by PC49¹²³. Our reading of the Council’s response is that although the IPI rezoned parts of the site, there is no inconsistency between the IPI and PC49.

164. To ensure the Panel was not overlooking or misunderstanding any of the parts of the site requested by the submitter to be rezoned to ‘another zone’, we requested Ms Rushmere to confirm the parts of the site the Panel must turn its mind to in its deliberations and in forming its recommendations on the changes to PC49 requested by submission S20¹²⁴.

165. The Council’s response via the right of reply confirmed that the only parts of the site that are within the scope of PC49 would be those identified in the Council’s earlier response to Minute 6¹²⁵, which we discuss above. Ms Rushmere did not recommend any additional changes that had not already been addressed in the s42A report or in the Council’s response to Minute 6.

166. In the absence of any evidence to the contrary, we accept the Council’s position on the most appropriate zoning of the site. We also agree with the concerns raised by FS7 – Greater Wellington Regional Council regarding natural hazard risk. We consider that any potential rezoning of the balance land as requested by the submission would need to be

¹²¹ At para. 3 of the submission.

¹²² Via Minute 6: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/minute-6-ipi.pdf>

¹²³ Council response to Minute 6:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/maps-for-hearing-panel-for-pc49-minute-6.pdf>

¹²⁴ Panel Minute 11, at para. 7.3:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/minute-11.pdf>

¹²⁵ Council Right of Reply, at paras. 172-175:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/right-of-reply-matters-for-pc49-final-17.05.24.pdf>

accompanied by a great deal more evaluation of the actual and potential risks arising from natural hazards.

167. With respect to submission S20.2's request for a zone to enable the listed activities, we find that insufficient information and evidence has been provided with the submission to enable the Panel to consider this request. Notwithstanding this, we agree with Ms Rushmere that the zoning proposed by PC49, as amended by the s42A report, to be the most appropriate zoning for those parts of the site based on the hazard risk and the zone description for Natural Open Space Zone as contained in the National Planning Standards.
168. Based upon the Panel's understanding of the natural hazard risk affecting those parts or the site proposed to be rezoned by PC49, we record that it is the Panel's opinion that it would be inappropriate to 'enable' many of the activities and development that submission S20.2 requests. The Panel considers that some of the activities and development requested such as residential, commercial, industrial, and subdivision would likely require careful consideration and analysis if located within areas subject to high natural hazard risk. The term 'enable' would, in our view, be the incorrect verb to underpin the consideration of these activities and development in a high hazard area such as the river bed. The Panel also notes that a consent path exists for the activities and development requested by the submission either via the proposed Natural Open Space Zone provisions, or via operative provisions located in the Subdivision and the Natural Hazards chapters of the District Plan.
169. Consequently, we recommend that the site be rezoned as shown in **Appendix 5**, and that the relevant submissions and further submissions be accepted, accepted in part or rejected in part for the reasons set out above and in **Appendix 3**.

27 Blenheim Street (Lot 3 DP 456184)

Background

170. PC49 proposes to rezone land at the rear of 27 Blenheim Street¹²⁶ from Open Space Zone to General Industrial Zone. When PC49 was notified, the site was split-zoned General Industrial Zone and Open Space Zone, with the Open Space Zone portion comprising a vegetated hill at the rear of the site.
171. As confirmed by the Council¹²⁷, since PC49 was notified, the entire site has been rezoned to Mixed Use Zone via the Council's now operative IPI. This occurred after the notification and submissions processes of PC49. As confirmed by the Council, the IPI became operative on 13 December 2023, following the hearing for PC49 on 27-29 November 2023.

¹²⁶ The 'Brewtown' site.

¹²⁷ Via the Council response memo to Panel Minute 6:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/maps-for-hearing-panel-for-pc49-minute-6.pdf>

This presents a timing issue for Council which is addressed in the ‘Discussion and Recommendation’ section below.

Submissions

172. Submission S25.1 – CBDI Limited supported the proposed rezoning and requested it be rezoned as notified.
173. Submission S23.29 – Forest & Bird opposed the proposed rezoning as the submitter considered that there is clearly a component that should be zoned Natural Open Space Zone. The submission requested PC 49 splits the zone to carve out the forested hill area as Natural Open Space Zone.

Council Evidence and Response to Submissions

174. The s42A report was prepared prior to the Council making decisions on its mandatory IPI that ultimately rezoned the site to Mixed Use Zone. Therefore, the Panel notes it was appropriate that the s42A report considered the zoning proposed by PC49 and the decisions requested by submissions without referring to the IPI.
175. The s42A report advised that the proposed rezoning was discussed with the owner prior to notification, and is consistent with the overall approach of generally not zoning private land as Open Space zone¹²⁸. Regarding submission S23.29’s request to rezone the rear portion of the site to Natural Open Space Zone, the s42A report pointed to the Council’s general position of not zoning private land as Open Space Zone.

Information or Evidence Presented at the Hearing

176. As we have previously outlined in the preceding sections of our report above, the Panel raised a general question during the hearing regarding sites proposed for rezoning under PC49 that may also be proposed for rezoning under the Council’s mandatory IPI. The Panel wished to identify potential conflicts and timing issues between PC49 and sites affected by the IPI. This was to ensure that our recommendations would not cause avoidable confusion to submitters and complicate Council’s decision making processes and the processes that may follow Council releasing its decisions on PC49 and Variation 1. The Panel followed up this question with a Minute¹²⁹ directing the Council to confirm the affected sites.
177. As set out in the ‘Background’ section above, the Council’s response to Minute 8 confirmed the zoning change to the site to Mixed Use Zone under the IPI.

Discussion and Recommendation

178. We agree with the Council that the most appropriate zoning for the site would be General Industrial Zone, or Mixed Use Zone as confirmed by the operative IPI. This is because we

¹²⁸ S42A report, at para 119.

¹²⁹ Panel Minute 8: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/minute-8-council-response-to-minute-6-ipi.pdf>

agree that the site offers no open space access or use for the community for open space purposes. The Panel accepts that, in the absence of any planning evidence to the contrary, this is regarded as being in line with good resource management practice and is consistent with other District Plans.

179. Whilst we acknowledge there is no legal impediment preventing the zoning of private land to Open Space Zone, we agree with the Council that this should generally not be done without landowner support.
180. As the site has already been rezoned to Mixed Use Zone via the IPI, we consider there to be one clear option to resolve the potential complications that may arise should the site be rezoned to General Industrial Zone via PC49. We recommend that Council withdraws the site from PC49 via clause 8D of Schedule 1 of the RMA before making decisions on PC49. It is the Panel's understanding that this would result in the rezoning of the site that has already occurred via the IPI being unaffected.
181. The Panel briefly considered whether it could recommend rejecting submission S25.1 which requested the zoning to go ahead as notified, however we did not consider this to be appropriate as technically, there is no scope available within other submissions to reject the submission.
182. In accordance with our discussion above, we recommend that the site at 27 Blenheim Street is formally withdrawn from PC49 pursuant to Clause 8D of Schedule 1 of the RMA prior to making decisions on the plan change. The Panel has recommended an amendment to the District Plan maps in **Appendix 5** demonstrating our recommendation to withdraw this site via red strikeout of the site.
183. Should the Council decide not to withdraw the site from PC49, please note that the Panel has made recommendations on the relevant submissions in **Appendix 1** that are within the scope of the plan change. In the event that the Council formally withdraws the site from PC49 before making decisions on PC49, although not technically required, for the sake of clarity we recommend that Council amend our recommendations on the relevant submissions in **Appendix 1** to record that the site was formally withdrawn by Council before making its decision on submissions and the plan change.

Royal Wellington Golf Club

Background

184. PC49 proposes rezoning the Royal Wellington Golf Club from the existing split-zoning of Special Activity Zone and Open Space Zone, to Sport and Active Recreation Zone. The majority of the site is currently zoned Special Activity Zone, with the Open Space Zone generally located along the northwestern boundary of the site with the Hutt River.

Submissions

185. Submission S19 – Royal Wellington Golf Club raised a number of submission points¹³⁰ opposing proposed provisions SARZ-S2 (building height¹³¹), SARZ-S3 (building setbacks), and SARZ-S6 (caretaker accommodation) on the basis that the proposed standards are more restrictive than those enjoyed by the Club under the existing zoning. The submitter also opposed proposed policy SARZ-S4 (gross floor area)¹³² on the grounds that it does not take into account the nature and scale of the buildings required to operate the club. However, the submitter did not ask for the site to be withdrawn from Plan Change 49.

Council Evidence and Response to Submissions

186. The s42A advised that the proposed change in zoning from Special Activity Zone and Open Space Zone to Sport and Active Recreation Zone was discussed with the Royal Wellington Golf Club¹³³. The Panel notes that s32 evaluation report also provides a summary of pre-notification consultation with the Club¹³⁴.

187. In response to the concerns raised in the submission, Ms Rushmere recommended amendments to standards SARZ-S3 (building setbacks) and SARZ-S6 (caretaker accommodation) to reduce the setback requirement to be in line with the existing standard that applies under the Special Activity Zone provisions, and to increase the gross floor area of caretaker accommodation to 100m². No other amendments were recommended in response to these matters raised by the submission on the basis that Ms Rushmere considered that the resource consent pathway provided the most appropriate basis for the case-by-case consideration of proposed exceedances of building height and building site coverage.

188. In the Council's right of reply, Ms Rushmere advised that scope exists within the submission of Royal Wellington Golf Club to amend the building height standard to a figure between 9m and 15m¹³⁵, but pointed the Panel to further consider the assessment of the zone provisions in the section 32 report, including that there is a consenting pathway for buildings higher than 9m¹³⁶.

189. Ms Rushmere also helpfully provided a comparative analysis of the provisions that apply to the site under the operative zoning versus those that would apply under the proposed

¹³⁰ S19.6, S19.7, and S19.9.

¹³¹ The Panel notes that building height falls under proposed standard SARZ-S1.

¹³² S19.8.

¹³³ At para. 212.

¹³⁴ S32 Evaluation report at section 4.6:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/pc49-section-32-report.pdf>

¹³⁵ At 165.

¹³⁶ At 167.

rezoning¹³⁷. This analysis also included the equivalent standards that apply to the adjacent General Residential Zone that had recently been amended via the Council's IPI.

190. Ms Rushmere also addressed the possibility of the site being formally withdrawn from PC49, leaving the site as currently zoned. Ms Rushmere considered that this could create inconsistency with other Sport and Active Recreation Zones, which also includes other golf courses in Upper Hutt¹³⁸. Ms Rushmere also outlined her understanding of the implications under the National Planning Standards as follows:

It is my understanding that the National Planning Standards are replacing the Special Activity Zone with Special Purpose Zones, and that Special Purpose Zones can only be created when the activities occurring on a site cannot be managed through other chapters of the District Plan. If the Royal Wellington Golf Club was to remain as Special Activity as per the Operative District Plan, then a future Special Purpose plan change would likely recommend that the site be managed through the Sport and Active Recreation Zone provisions.¹³⁹

191. Ms Rushmere did not recommend any further changes to the provisions in response to the concerns raised in the submission.

Information or Evidence Presented at the Hearing

192. The Panel heard from Mr Lindstrom and Mr McLean on behalf of the Royal Wellington Golf Club on day four of the initial hearing. Mr Lindstrom and Mr McLean acknowledged that they had been consulted by the Council prior to the notification of PC49 on the proposed rezoning of the Club land, but advised that they did not fully appreciate the differences that would apply to the site following the changes to the rules and standards. Other points raised by Mr Lindstrom and Mr McLean during the hearing included:

- (a) That the PC49 objectives and policies contemplate that privately owned open space zoned land is to be treated somewhat differently to publicly owned open space zoned land.
- (b) The existing Special Activity Zone provisions enjoyed by the club enable other activities that are not provided for under the proposed Sport and Active Recreation Zone - such as accommodation activities.
- (c) It is entirely unclear why the Club should be subjected to new restrictions that are not currently imposed under the existing zoning.

193. Mr Lindstrom and Mr McLean made it clear to the Panel that the Club would prefer to remain under the existing zoning, but acknowledged that in technical terms the submission

¹³⁷ Appendix 5 to the right of reply:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/appendix-5-comparison-of-rules-and-standards-for-royal-wellington-golf-club.pdf>

¹³⁸ At 163.

¹³⁹ At 164.

did not specifically request this even though that is what they wanted.

Discussion and Recommendation

194. As recommended by Ms Rushmere in the right of reply, the Panel has reviewed the s32 evaluation to reconsider those parts relevant to the proposed rezoning of the Club land from the current split-zoning to Sport and Active Recreation Zone. The Panel’s findings from this review of the s32 evaluation were:

- (a) Legal advice sought by Council regarding the legality of zoning private land as open space concluded that if the land use was consistent with the purpose of the zone, there was no legal barrier to zoning the land as such¹⁴⁰.
- (b) There will be a future Special Activity Zone review plan change where the Council will review the Speedway site alongside all other special activity zoned sites including the racecourse¹⁴¹.
- (c) The conclusion of the economic cost benefit analysis conducted was that the zoning of privately operated sports clubs was not considered to have significant costs, with costs focused on the ability for any club to subdivide in the future which could be required under specific circumstances¹⁴².

195. The Panel’s primary concern regarding the potential impact on the Royal Wellington Golf Club that may arise from the proposed rezoning is the loss of the clear provision for a range of ancillary activities under the current Special Activity Zoning that are allegedly not clearly enabled under the proposed Sport and Active Recreation Zone. An example provided by Mr Lindstrom and Mr McLean during the hearing was accommodation activities. We did not investigate the full range of activities that would have activity status and policy direction changes resulting from the rezoning of the site as we did not receive planning evidence on those aspects, however, we note the example provided by Mr Lindstrom and Mr McLean may fall under operative rule SARZ-R7 as follows:

Permitted Activities		
Zone-wide (excluding the St Patrick’s Estate Area)		
SARZ-R7	Active and passive recreation and ancillary activities and buildings	PER

196. It is our understanding of the PC49 provisions that the proposed rezoning of the site would mean that accommodation activities (if deemed an *ancillary activity*) would shift from potentially a permitted activity under the existing zoning, to a restricted discretionary activity under the proposed Sport and Active Recreation Zone rule SARZ-R13 (visitor accommodation).

¹⁴⁰ At 7.9.20.

¹⁴¹ At 7.9.24.

¹⁴² At 7.2.25.

197. Although the Panel agrees with the s32 evaluation that there is no legal impediment to rezoning the site to Sport and Active Recreation Zone, the Panel is concerned that, as signalled by Mr Lindstrom and Mr McLean at the hearing, activities currently enabled on the site under the existing zoning may no longer be clearly enabled under the proposed zoning. We do not provide a view on the appropriateness of the currently enabled activities on the site under the Special Activity Zone provisions, but we do consider that the provisions for the site should be developed in close consultation with the owner of the site to identify any appropriate site-specific provisions that would address the owner’s concerns associated with the rezoning. If those discussions were to result in agreement on the need for a bespoke approach to provisions for the site, we note that the National Planning Standards would appear to enable such an approach via the rezoning of the site to Sport and Active Recreation Zone in combination with the application of a Precinct as follows¹⁴³:

Table 18: Spatial layers for district plans and district plan components of combined plans table

Spatial layer name	Function	Location of spatial layer provisions
<i>Precincts</i>	<i>A precinct spatially identifies and manages an area where additional place-based provisions apply to modify or refine aspects of the policy approach or outcomes anticipated in the underlying zone(s).</i>	<i>If apply to only one zone, in the associated zone chapter or section If apply to multiple zones, in the multi-zone precincts chapters</i>

198. As the submission provides no scope to address these fundamental issues, the Panel considers that addressing submission S19 – Royal Wellington Golf Club’s concerns regarding the proposed rezoning of the site would be best addressed as part of the future Special Activity Zone plan change as signalled in the s32 evaluation report. This would require the Council to formally withdraw the Royal Wellington Golf Club site from PC49 via Clause 8D of Schedule 1 of the RMA.

199. Regarding the amendments recommended by Ms Rushmere to permitted standards SARZ-S3 and SARZ-S6, we agree these are appropriate amendments for the same reasons Ms Rushmere refers to in the s42A report. We also agree with Ms Rushmere’s reasoning for not recommending additional amendments to the provisions in response to the matters raised in the submission.

200. We therefore recommend that SARZ-S3 and SARZ-S6 be amended as set out in **Appendix 3**, and that the relevant submissions be accepted, accepted in part or rejected for the reasons set out in **Appendix 1**.

¹⁴³ National Planning Standards, section 12, Table 18:
<https://environment.govt.nz/assets/publications/national-planning-standards-november-2019-updated-2022.pdf>

201. As a consequence of the matters we outline above, the Panel recommends that the Council formally withdraws the Royal Wellington Golf Club site from PC49 via Clause 8D of Schedule 1 of the RMA to enable discussions to occur between staff and the landowner to be addressed via the future Special Activity Zone plan change. We record this recommendation in **Appendix 5** via the red strike-out of the site from the PC49 District Plan Maps.

General Zoning Changes and Review of Open Space Zoned Land

Submissions

202. Submissions S23.1 and S23.2 - Forest & Bird requested that Council commission an independent report to identify additional land to be zoned as Natural Open Space that should be applied to private land where appropriate. The submission considered that the approach of PC49 to avoid zoning private land as Natural Open Space is not consistent with the purpose and definition of the zone. Submission S23.1 was supported by seven further submissions as set out in Appendix 1.
203. Submission S10.1 - Mary Beth Taylor requested that the Open Space and Recreation Zones are expanded to include more land, specifically land zoned as Natural Open Space. The submission considered that Open Spaces should be more holistically incorporated into human habitations.
204. Submission S17.1 - A. G. Spiers also requested that more land is zoned as Open Space, specifically land zoned as Natural Open Space, to create a network of areas which are linked and provide benefits to the natural environment through wildlife movement corridors. Submission S17.1 was supported by six further submissions as set out in Appendix 1.

Council Evidence and Response to Submissions

205. The s42A report prepared by Ms Rushmere pointed to the Council's position that as a general principle, PC49 does not propose to zone private land as Open Space unless the land is currently used for recreation activities, such as golf courses and the Hutt Valley Clay Target Club¹⁴⁴. Ms Rushmere acknowledged that whilst there was no legal impediment preventing the Council from rezoning privately owned land as Open Space, she considered this would need to be considered alongside determining the most appropriate zoning for the land. She considered that it is not common planning practice to zone private land as an Open Space Zone where that land is private land which has no recreation or leisure use, characterised by private residences or farming activities. The s42A confirmed that a review of current practice undertaken during the development of PC49 demonstrated that this position is consistent with the approach taken to Open Space zoning in other District

¹⁴⁴ S42A, at para. 96.

Plans¹⁴⁵.

206. On this basis, Ms Rushmere agreed with the principle forward by submission S23.2 – Forest & Bird that the Natural Open Space Zone be applied to private land where appropriate, she did not accept there was a need for submission S23.1 – Forest & Bird’s request that the Council commission an independent report to identify additional land to be zoned Natural Open Space Zone.
207. Regarding submissions S10.1 - Mary Beth Taylor and S17.1 - A. G. Spiers requests to identify more land to be zoned open space, Ms Rushmere advised that since PC49 was notified some areas of additional Natural Open Space have been identified through the development of other plan changes. Ms Rushmere recommended these sites be included for rezoning via PC49 as a result of these submissions.

Discussion and Recommendation

208. We agree with Ms Rushmere that the approach taken by the Council in whether to rezone private land as Natural Open Space is appropriate, and in the lack of any planning evidence to the contrary, we agree this is good resource management practice and consistent with other district plans.
209. We recommend including the additional sites recommended by Ms Rushmere for inclusion in PC49, as this would provide partial relief to submissions S10.1 and S17.1
210. We therefore recommend that the District Plan maps be amended as set out in **Appendix 5**, including the additional sites as identified at in Table 4 of the s42A report. We recommend that the relevant submissions be accepted, accepted in part or rejected for the reasons set out above and in **Appendix 1**.

Biodiversity and Sustainability Provisions

Submissions

211. As described in the s42A report, there were four submissions that requested amendments to PC49 provisions to address biodiversity or sustainability matters.
212. Greater Wellington Regional Council requested¹⁴⁶ the Natural Open Space Zone matters of discretion be amended to include consideration of indigenous biodiversity values, as the submitter noted that the existing District Plan does not give effect to Policies 23-28 and Policy 47 of the Regional Policy Statement. These RPS policies focus on the identification and protection of indigenous ecosystems and habitats, and the identification, protection, and management of Outstanding Natural Features and Landscapes and Special Amenity Landscapes. The submission also requested similar amendments be made to the Open

¹⁴⁵ S42A, at para. 98.

¹⁴⁶ Via submission points S26.2, S26.5, S26.6, S26.7, S26.8, S26.9, S26.10, S26.12, S26.13, S26.14, and S26.15.

Space and Recreation Zone provisions including the subdivision provisions¹⁴⁷, and that:

- (a) reference is made to park management plans¹⁴⁸; and
- (b) to include orchards as an enabled activity in proposed policy NOSZ-P5¹⁴⁹.

213. Further submission FS8 – Mary Beth Taylor supported GWRC’s request to include indigenous biodiversity values as a matter of discretion to NOSZ rules.

214. Submissions S10.2 and 10.3 – Mary Beth Taylor requested amendments to make stronger connections with the Council’s Sustainability Strategy, and that PC49 includes provisions of environmental care and biodiversity protection and restoration. A focus on the protection and restoration of existing biodiversity was also requested by submission S17.2 – A. G. Spiers. A total of twelve further submissions support these submissions.

215. Submitter S23 – Forest & Bird requested multiple amendments to address biodiversity and sustainability matters which we summarise as including:

- (a) That the proposed Open Space and Recreation Zone strategic objectives are amended to better reflect the difference between the proposed Open Space Zones, and the potential different access between private and public Open Space sites¹⁵⁰. This submission is supported by six further submissions who generally agree with all aspects of the submission S23.
- (b) That a distinction be made between Natural Open Space zoned land on private versus publicly owned land¹⁵¹.
- (c) The Natural Open Space zone provisions are amended so that the retention of the natural environment is the primary focus by removing the enabling approach towards recreation of other uses¹⁵².
- (d) The addition of matters of consideration for the proposed Open Space and Recreation Zones in the Ecosystems and Indigenous Biodiversity Chapter and Natural Features and Landscape Chapter¹⁵³.
- (e) That the subdivision provisions for Open Space and Recreation Zones are amended because there is not enough differentiation between the subdivision standards for the different zones¹⁵⁴.
- (f) That a new NOSZ policy be included that requires the management of pest animals

¹⁴⁷ S26.3.

¹⁴⁸ S26.4.

¹⁴⁹ S26.11.

¹⁵⁰ S23.8.

¹⁵¹ S23.3, S23.16.

¹⁵² S23.4.

¹⁵³ S23.9 & S23.10.

¹⁵⁴ S23.14.

and plants in the zone¹⁵⁵. This was supported in part by FS7 – Greater Wellington Regional Council who agreed with the principle but raised concerns regarding what pieces of land the requested amendments were intended to apply to, and what was meant by the term ‘management plan’.

Council Evidence and Response to Submissions

216. In the s42A report, Ms Rushmere noted the significant degree of overlap between the changes requested by submissions S26 – Greater Wellington Regional Council and S23 – Forest & Bird with respect to seeking greater protection of environmental values throughout the provisions. Ms Rushmere advised that while the natural environment comprises a key component of the Natural Open Space Zone provisions, the primary purpose of the zone is not exclusive to the protection of the natural environment¹⁵⁶.
217. Ms Rushmere also outlined the other workstreams the Council is undertaking as part of the rolling review of the District Plan to give effect to RPS policies 23-28 with respect to SNAs and Landscapes.
218. In summary, Ms Rushmere made a series of recommended amendments to address many of the matters raised by submissions S23 – Forest & Bird and S26 – Greater Wellington Regional Council. The recommended amendments include inserting references to indigenous biodiversity to multiple provisions on the basis that she considered that recognition of indigenous biodiversity would be compatible with recreation and leisure activities intended to be carried out in the zone¹⁵⁷.
219. As a consequence of Ms Rushmere noting that the purpose of the Natural Open Space Zone is greater than the protection of the natural environment, she recommended that the requests by S23 - Forest & Bird seeking amendments to place a greater focus on these values be rejected.
220. Ms Rushmere did not support any of the other changes requested by submissions S23 and S26¹⁵⁸.
221. Regarding submission S23.3 – Forest & Bird requesting provisions that restrict public access to protect natural values and private property as appropriate, Ms Rushmere considered that this would not be consistent with the intent of the zone, which is to allow for a range of recreation activities in areas with natural values. Ms Rushmere noted that protection of natural values is not the primary purpose of the Natural Open Space Zone¹⁵⁹.
222. Regarding submissions S10.3 – Mary Beth Taylor and S17.2 – A. G. Speirs which contended that the approach adopted by PC49 is at odds with the UHCC Sustainability Strategy, Ms

¹⁵⁵ S23.25

¹⁵⁶ At para. 153.

¹⁵⁷ At para. 154.

¹⁵⁸ As set out in paras. 158, 159, 166, 167 of the s42A report.

¹⁵⁹ At para. 156.

Rushmere disagreed and contended that PC49 is aligned with Goal 2 of the Strategy by utilising the Natural Open Space Zone to protect the natural character of open spaces¹⁶⁰.

223. Ms Rushmere disagreed with submissions S10.2 – Mary Beth Taylor’s assertion that PC49 is poorly linked to the Sustainability Strategy. Ms Rushmere advised that not all of the relevant goals of the Sustainability Strategy can be implemented via PC49¹⁶¹.

Discussion and Recommendation

224. The Panel agrees with the suite of recommended amendments and reasons provided by Ms Rushmere. We consider that PC49 cannot deliver all aspirations of submitters in terms of the desired direction of focus for the provisions and the range of matters covered by the provisions. The Panel notes the Council is in the process of the rolling review of the District Plan, which we consider will provide an opportunity for the Council and submitters to address some of the matters requested by the submissions via potential amendments to other chapters of the District Plan including via the SNA and landscape draft plan changes referred to by Ms Rushmere.
225. We agree with Ms Rushmere and submitters that the recommended amendments are appropriate changes to the provisions, in particular the references to indigenous biodiversity values, orchards, and Regional Parks.
226. Regarding submission S23.3 – Forest & Bird requesting provisions that restrict public access to protect natural values and private property, we agree with Ms Rushmere’s reasoning for not recommending amendments in response to this submission.
227. We did not receive any specific recommended amendments from Ms Rushmere to add the consideration of indigenous biodiversity values to the proposed subdivision matters of control/discretion in response to submission S26.3 – Greater Wellington Regional Council. However, we consider that making such amendments would be consistent with the other multiple similar amendments Ms Rushmere recommends with respect to references to indigenous biodiversity values.
228. We recommend that the relevant provisions be amended as set out in **Appendix 3**, and that all relevant submissions and further submissions be accepted, accepted in part, or rejected for the reasons set out above and as specified in **Appendix 1**.

NOSZ Objectives

Objective NOSZ-O1

Submissions

229. Submissions S23.17 – Forest & Bird considered that NOSZ-O1 is not consistent with the

¹⁶⁰ At para. 168.

¹⁶¹ At para. 169.

national planning standards, and is inconsistent with the Regional Policy Statement and part 2 of the RMA. The submission requested the proposed objective be amended as follows:

NOSZ-O1	Purpose of the Natural Open Space Zones
<p>The Natural Open Space Zone enables <u>retains natural environmental values and provides opportunities for a range of passive recreation, customary and conservation activities with ancillary structures which to occur within the natural environment and have a high degree of interaction with natural features, where appropriate.</u></p>	

Council Evidence and Response to Submissions

230. Ms Rushmere agreed in part that the requested changes to NOSZ-O1 were appropriate. She did not agree that it would be appropriate to remove reference to ‘ancillary structures’ on the basis that they can support recreation and other activities, including conservation and customary activities within the Natural Open Space Zone¹⁶².

Discussion and Recommendation

231. We agree with Ms Rushmere that the recommended amendments to NOSZ-O1 are appropriate, for the same reasons Ms Rushmere points to in the s42A report.

232. We recommend objective NOSZ-O1 be amended as set out in **Appendix 3**, and that submission S23.17 be accepted in part for the reasons set out above and as specified in **Appendix 1**.

Objective NOSZ-O2

Submissions

233. Submissions S23.18 – Forest & Bird¹⁶³ considered that NOSZ-O2 is not consistent with the national planning standards and is inconsistent with the Regional Policy Statement and part 2 of the RMA. The submission requested the objective be amended as follows:

NOSZ-O2	Character and Amenity Values of the Natural Open Space Zone
<p>Activities and development within the Natural Open Space Zone <u>protects indigenous species, their habitats and ecosystem functions</u>, maintains the amenity values and natural character of the Natural Open Space Zone by ensuring that they are of an appropriate scale <u>and appropriately located, including:</u></p>	

234. Submission S26.5 – Greater Wellington Regional Council requested objective NOSZ-O2 be

¹⁶² At para. 160.

¹⁶³ Submissions S23.7 and S23.28 request similar amendments.

amended to give effect to Policy 47 of the RPS by adding reference to ‘indigenous biodiversity values’ and ‘with associated natural and ecological value’.

235. Submission S16.45 – Waka Kotahi NZ Transport Agency¹⁶⁴ requested the objective be amended to include an additional clause as follows:

(4) Adverse effects on the wider environment and supporting infrastructure are managed appropriately.

Council Evidence and Response to Submissions

236. The Panel did not receive specific advice on the amendment requested by S16.45 – Waka Kotahi, however, the Panel records that the amendment requested is consistent with other amendments requested by submitter S16 to include additional provisions addressing infrastructure matters. With respect to the amendments requested by submission S16 across PC49, the s42A report advised as follows:

Following their submission, Waka Kotahi has met with Council officers on December 15, 2021, to discuss their submission points relating to the transport effects from the proposed plan change. This includes the recommendation to introduce trip generation thresholds for all activities and development to help address the potential adverse effects on the transport network. It was agreed that the most appropriate method of addressing these submission points would be through a comprehensive review of the Transport Chapter which is programmed as part of the current rolling review of the Operative District Plan, intended to be notified in 2024¹⁶⁵.

237. With respect to the amendments requested by submissions S23.18 – Forest & Bird and S26.5 – Greater Wellington Regional Council, Ms Rushmere generally agreed the requested changes were appropriate for similar reasons for those described under NOSZ-O1 above, but did not recommend all requested wording be included.

Discussion and Recommendation

238. We agree with Ms Rushmere that the recommended amendments to NOSZ-O2 are appropriate, for the same reasons Ms Rushmere points to in the s42A report. For clarity, the Panel considers that the balance of the requested wording under submission S23.18 that is not recommended for inclusion in NOSZ-O2 is better captured by the general term ‘indigenous biodiversity’ as recommended by Ms Rushmere.

239. We recommend objective NOSZ-O2 be amended as set out in **Appendix 3**, and that relevant submissions be accepted, accepted in part, or rejected for the reasons set out above and as specified in **Appendix 1**.

¹⁶⁴ Submission point S16.45 was added to Appendix 1 as it did not appear to have been previously summarised.

¹⁶⁵ At para. 245.

Objective NOSZ-O3

Submissions

240. Submission S23.19 – Forest & Bird requested amendments to NOSZ-O3 as the submitter considered that inclusion of the term ‘enable’ is not appropriate within the proposed objective as the purpose and character of the Natural Open Space Zone is not clearly set out. The requested amendments are as follows:

NOSZ-O3	Recognising Regional Parks
Enable a diverse range of activities within Regional Parks, which are compatible with the purpose, natural character and amenity values of the Natural Open Space Zone, that Recognise their contribution of Regional Parks to the open space network of Upper Hutt.	

241. This submission was opposed by further submission FS7 – Greater Wellington Regional Council on the basis that the further submitter considered that the natural open space zone should be about people being able to access and enjoy natural open spaces, as recognised in Toitū te Whenua Parks Network Plan 2020-2030.
242. Submission S26.6 – Greater Wellington Regional Council requested amendments to insert a reference to indigenous biodiversity.

Council Evidence and Response to Submissions

243. The s42A recommended that amendments be made remove reference to ‘enable’ from the objective as Ms Rushmere agreed with submission S23.19 – Forest & Bird that this was not appropriate within the objective. However, Ms Rushmere disagreed that reference to regional parks should be removed because she considered that the objective recognises that regional parks will have more diverse activities due to their scale and nature.
244. Ms Rushmere also recommended the inclusion of reference to ‘indigenous biodiversity’ in the objective as requested by submission S26.6 – Greater Wellington Regional Council on the basis this would be compatible with the recreation and leisure activities intended to be carried out in the Natural Open Space Zone.

Discussion and Recommendation

245. We agree with Ms Rushmere’s reasoning for the recommended amendments to NOSZ-O3. We therefore recommend that NOSZ-O3 be amended as set out in **Appendix 3**, and that the relevant submissions and further submissions be accepted, accepted in part or rejected for the reasons set out above and in **Appendix 1**.

NOSZ Policies

Policy NOSZ-P1

Background

246. NOSZ-P1 was notified as follows:

NOSZ-P1	<i>Compatible Activities</i>
<u>Enable Informal sports and passive recreation activities, conservation, and customary activities, which are of an appropriate scale within the Natural Open Space Zone that are compatible with the natural character and amenity values of the site.</u>	

Submissions

247. Submission S23.20 – Forest & Bird requested amendments to replace the verb ‘enable’ with ‘provide for’ as the submitter considered that activities should be provided for where appropriate rather than enabled. The submission considered that enabling suggests an active role for Council which may not be appropriate on private land. The submission also requested that ‘and location’ be added to the policy because it is referred to in proposed objective NOSZ-O2.
248. Submission S26.7 – Greater Wellington Regional Council requested that reference to ‘indigenous biodiversity’ be added to policy NOSZ-P1.

Council Evidence and Response to Submissions

249. The s42A report recommended amendments in response to submission S23.20 – Forest & Bird, albeit in a different format in terms of the location of the recommended wording amendment within the policy.

Discussion and Recommendation

250. We agree with the recommendations to NOSZ-P1 as recommended by Ms Rushmere. We consider the location of the requested additional wording referring to ‘location’ are best placed where the policy sets out the enablement of the appropriateness of the scale of the listed activities, rather than in the text that follows this.
251. We note we have previously addressed the requested inclusion of reference to indigenous biodiversity by submission S26.7 – Greater Wellington Regional Council, where we recommend this requested amendment be accepted.
252. We recommend that policy NOSZ-P1 be amended as set out in **Appendix 3**, and that the relevant submissions be accepted or accepted in part for the reasons set out above and in **Appendix 1**.

Policy NOSZ-P2

Background

253. NOSZ-P2 was notified as follows:

NOSZ-P2	<i>Appropriate Development</i>
<p>Provide for built development including:</p> <ol style="list-style-type: none"> 1. Buildings & structures; 2. <u>Walking and cycling tracks;</u> 3. <u>Bridleways;</u> 4. <u>Parking areas; and</u> 5. Park facilities, <p><u>designed, located and at a scale, to support informal sports and recreation activities, conservation, and customary activities that do not adversely affect the natural character, and amenity values of the Natural Open Space Zone.</u></p>	

Submissions

254. Submission S16.23 – Waka Kotahi requested an amendment to clause (5) of policy NOSZ-P2 to include consideration of adverse effects on the wider environment because activities proposed in the zone have the potential to impact on the safe and efficient function of the transport network.
255. Submission S23.21 – Forest & Bird requested an amendment to the policy to shift the verb direction from ‘provide’, to ‘consider enabling’ as the submitter considered the matters listed in the policy may not always be appropriate as a consideration.
256. Submission S26.8 – Greater Wellington Regional Council requested that reference to ‘indigenous biodiversity’ be added to policy NOSZ-P2.

Council Evidence and Response to Submissions

257. With respect to submission S16.23 – Waka Kotahi, the s42A report advised that that following the receipt of submissions on PC49, that Council officers and the submitter have agreed to work collaboratively on transportation and infrastructure provisions across the District Plan via a future plan change. As a consequence, Ms Rushmere recommended that all submission points by submission S26 – Waka Kotahi be accepted in part on the basis they would be given effect to through a future plan change.
258. Regarding submission S23.21 – Forest & Bird requesting a shift in the verb direction to ‘consider enabling’, Ms Rushmere considered that the requested amendment implies a degree of discretion, and that this would not be appropriate as the policy also applies to permitted activity rules and standards within the Natural Open Space zone.
259. Submission S26.8 – Greater Wellington Regional Council forms a suite of similar requested amendments to include references to indigenous biodiversity, which Ms Rushmere recommended be accepted.

Discussion and Recommendation

260. We note we have previously addressed the requested inclusion of reference to ‘indigenous biodiversity’ by submission S26.7 – Greater Wellington Regional Council, where we recommend this requested amendment and other similar requested amendments be

accepted.

261. Regarding the submission S16.23 - Waka Kotahi requesting an amendment to include consideration of adverse effects on the wider environment, based on the evidence provided by Ms Rushmere within the s42A report¹⁶⁶ it is the Panel's understanding that Council officers and the submitter have agreed to work collaboratively on transportation and infrastructure provisions across the District Plan via a future plan change. On this basis, Ms Rushmere recommends no amendments be made to PC49 provisions in response to the entire submission by Waka Kotahi¹⁶⁷.
262. The Panel notes submission S16 – Waka Kotahi has not been withdrawn and therefore the Panel must still consider the changes its requests. In the absence of any evidence to the contrary, we accept the position put forward by Ms Rushmere that the submitter has accepted that the requested changes to PC49 will be addressed via a comprehensive future plan change.
263. Regarding the request by submission S23.21 – Forest & Bird requesting a shift in the verb direction from 'enable' to 'consider enabling', we agree with Ms Rushmere that the requested amendment would not be consistent with the rules and standards for the Natural Open Space Zone, as policy NOSZ-P2 is also the policy that underpins permitted activity rules and standards. We also consider that the policy includes sufficient clarity to decision makers on resource consent applications, as the activities listed in the policy are only enabled where they will not adversely affect the natural character and amenity values of the Natural Open Space Zone.
264. We recommend that policy NOSZ-P2 be amended as set out in **Appendix 3**, and that the relevant submissions and further submissions be accepted, accepted in part or rejected for the reasons set out above within **Appendix 1**.

Policy NOSZ-P3

Background

265. NOSZ-P3 was notified as follows:

NOSZ-P3	Inappropriate activities and development
Avoid activities or developments which are incompatible with the natural character and amenity values of the Natural Open Space Zone, including avoiding:	
1. Motorised recreation outside of specified areas in NOSZ-R11;	
2. Activities or development which inhibit recreational, conservation or customary activities ; and	
3. Activities which result in large scale development and a loss of natural character within the zone.	

¹⁶⁶ At paras 245-246.

¹⁶⁷ S42A report, at para. 249.

Submissions

266. Submission S20.5 – Wooster and Teasdale Families suggested that some provisions could be amended to improve clarity and avoid inadvertent misinterpretation, for example NOSZ-P3(3). The submission considered that the policy should be amended to state that “activities which result in large scale development within the zone, and a loss of natural character within the zone”. The submission contends that this clause risks being misinterpreted as directing large-scale development outside the zone to be avoided, which the submission considered is not an appropriate outcome.
267. As summarised in the s42A report, submission S23.22 – Forest & Bird generally supported the avoidance of activities in NOSZ-P3, but requested that amendments be made to ensure the policy could be applied on private land and to Regional Parks, and to ensure conservation activities are not inhibited where they conflict with recreation activities.

Council Evidence and Response to Submissions

268. Regarding Submission S20.5 – Wooster and Teasdale Families request to amend the wording of NOSZ-P3 and OSZ-P3, Ms Rushmere recommended an amendment to OSZ-P3 to add reference to ‘within the zone’ as requested by the submission, but did not recommend any amendment to NOSZ-P3 as it had been recommended for amendment in response to another submission.
269. Ms Rushmere supported amending proposed NOSZ-P3 in response to submission S23.22 – Forest & Bird as she considered that it provides useful clarification to the policy with respect to regional parks.

Discussion and Recommendation

270. We agree with Ms Rushmere that an amendment to add reference to ‘within the zone’ to policy OSZ-P3 as requested by submission S20.5 – Wooster and Teasdale Families is acceptable as this would improve consistency with the wording of policy NOSZ-P3. Although we recommend the amendment be made for the sake of consistency, we record that we consider the policy direction would logically not be applied to a proposed large scale development on land that is not zoned Natural Open Space or Open Space Zone.
271. We also agree with Ms Rushmere that the recommended amendments to NOSZ-P3 in response to the concerns raised by submission S23.22 – Forest & Bird provide useful additional clarification and policy direction.
272. We recommend that policy NOSZ-P3 be amended as set out in **Appendix 3**, and that the relevant submissions and be accepted for the reasons set out above and in **Appendix 1**.

Policy NOSZ-P4

Background

273. NOSZ-P4 was notified as follows:

NOSZ-P4	Protecting Purpose, Amenity and Character
<p>Maintain and enhance recreational, cultural, and amenity values, through the management of adverse effects, by:</p> <ol style="list-style-type: none"> 1. Controlling the scale and location of buildings and structures; 2. Improving the access to and the connections between Open Space and Recreation Zones; and 3. Manage adverse effects from activities, such as noise and light overspill, to maintain open space amenity values. 	

Submissions

274. Submission S23.23 – Forest & Bird considered that the approach of NOSZ-P4 to enhance activities and values as detailed in the policy is inconsistent with Part 2 of the RMA (specifically section 6), where the protection of natural values is considered secondary. The submission requested policy NOSZ-P4 be amended as follows:

NOSZ-P4	Protecting Purpose, Amenity and Character
<p>Maintain and <u>where appropriate</u> enhance recreational, cultural, and amenity values, through the management of adverse effects, by:</p> <ol style="list-style-type: none"> 1. Controlling the scale and location of buildings and structures; 2. Improving the access to and the connections between Open Space and Recreation Zones; and 3. Manage adverse effects from activities, such as noise and light overspill, to maintain open space amenity values, <u>where</u> <u>Consistent with the protection of significant indigenous biodiversity and preservation of natural character.</u> 	

Council Evidence and Response to Submissions

275. Ms Rushmere generally agreed with the requested amendments to NOSZ-P4 as she considered it would provide clarity that those listed activities should be enhanced where appropriate, and this would include specifying the protection of significant indigenous vegetation. Ms Rushmere recommended alternative amendments that she considered was consistent with the changes requested by S23.33.

Discussion and Recommendation

276. We agree with the recommended amendments put forward by Ms Rushmere. Although we acknowledge the recommended amendments are in a different form to that requested by submission S23.22, we consider the positioning of the additional words ‘where appropriate’ and ‘indigenous biodiversity’ sits more appropriately within the substantive part of the policy that sets the policy direction.

277. We therefore recommend that NOSZ-P4 be amended as set out in **Appendix 3**, and that submission S23.33 – Forest & Bird be accepted in part for the reasons set out above and in **Appendix 1**.

Policy NOSZ-P5

Background

278. NOSZ-P5 was notified as follows:

NOSZ-P5	Primary Production within Regional Parks
<p>Enable the following primary production activities within the Greater Wellington Regional Parks:</p> <ol style="list-style-type: none"><li data-bbox="347 479 647 510">1. Plantation forestry;<li data-bbox="347 515 576 546">2. <u>Stock Grazing;</u><li data-bbox="347 551 611 582">3. <u>Bee Keeping; and</u><li data-bbox="347 586 1342 645">4. Quarrying activities where the works are for the management of park roads or tracks.	

Submissions

279. Submission S23.24 – Forest & Bird considered that the enablement of activities specified within the policy is not appropriate, and that Council should retain discretion to decline – in particular quarrying and bee keeping activities.

280. This submission was opposed by further submission FS7 – Greater Wellington Regional Council as, in summary, the further submitter considered that these activities are appropriately managed through the Toitū te Whenua Parks Network Plan 2020-2030. The further submission noted that bee keeping and quarrying activities are restricted activities under the Toitū te Whenua Parks Network Plan, and this requires an assessment of effects.

Council Evidence and Response to Submissions

281. Ms Rushmere advised that she did not support the requested removal of ‘enable’ and ‘plantation forestry’ from NOSZ-P5. Ms Rushmere noted that the policy recognises that there are unique activities within the Regional Parks which are not anticipated to occur in Natural Open Space Zones outside of Regional Parks.

Discussion and Recommendation

282. The Panel agrees with Ms Rushmere that it is appropriate that primary production activities are enabled within the specified regional parks, as these activities are best managed by the Regional Council via the Toitū te Whenua Parks Network Plan 2020-2030. We therefore consider that the term ‘enable’ is the correct verb.

283. Although we understand the concerns expressed by submission S23.24 regarding bee keeping, quarrying, and plantation forestry activities should be able to be declined within regional parks, we are satisfied with the position put forward by further submission FS7 – Greater Wellington Regional Council that clarifies that the management of primary production activities within the Regional Parks is managed via the Toitū te Whenua Parks Network Plan 2020-2030, which does not enable such activities as a permitted activity. The Panel considers the management of these activities in a comprehensive manner by the Regional Council via its Network Plan is the most effective and efficient method to achieve

the relevant objectives and the purpose of the RMA.

284. In coming to this position, the Panel also notes that regional councils have functions under s31 of the RMA, including the maintenance of indigenous biodiversity under the RMA, and that this may address some of the concerns expressed by submission S23.24.
285. In addition, the Panel notes the advice provided by Ms Rushmere in the right of reply that the pine forest on the Silverstream Spur has not been managed as a commercial forest, and the National Environmental Standards for Commercial Forestry applies to continuous forests that are deliberately established for commercial purposes. In the absence of any evidence to the contrary, we accept Ms Rushmere's advice on this matter.
286. We recommend that NOSZ-P5 be confirmed as set out in **Appendix 3**, and that the relevant submissions and further submissions be accepted, accepted in part or rejected for the reasons set out above and within **Appendix 1**.

Requested New NOSZ Policy

Submissions

287. Submission S23.25 – Forest & Bird requested a new Natural Open Space Zone policy which requires the management of pest animals and plants as follows:

UHCC ensures there are management plans in place to control pest animals and pest plants on UHCC natural open spaces.

288. This was supported in part by further submission FS7 – Greater Wellington Regional Council as it supports ensuring pest management occurs in the Natural Open Space Zone, however the further submission noted that it was not clear which pieces of land are being referred to in the submission.

Council Evidence and Response to Submissions

289. Ms Rushmere considered that management plans to control pest animals and plants would be addressed via a reserve management plan under the Reserves Act or Regional Park Management Plan, and therefore she did not consider it appropriate to recommend adding this policy into the Natural Open Space Zone provisions as it is not a District Plan matter.

Discussion and Recommendation

290. We agree with Ms Rushmere that the requested new policy would not be effective within the District Plan, as it is an RMA regulatory document. We consider that management plans for the control of pest animals and plants would likely fall under the provisions of either the Reserves Act, a Regional Park Management Plan, or a management plan or strategy prepared under the Local Government Act.
291. We therefore recommend the submission and further submission be rejected for the reasons set out above and in **Appendix 1**.

Sport and Active Recreation Zone

SARZ-O2

Background

292. SARZ-O2 was notified as follows:

SARZ-O2	<i>Character and Amenity Values of the Sport and Active Recreation Zone</i>
<p>Activities and development within the Sport and Active Recreation Zone ensure amenity values and character of the Sport and Active Recreation Zone are maintained including:</p> <ol style="list-style-type: none">1. <u>Built form retains openness is still maintained through the appropriate location and scaling of buildings;</u>2. <u>Infrastructure to support different sports and active recreation activities; and</u>3. <u>Spaces are accessible and positively contribute to health and wellbeing of communities.</u>	

Submissions

293. Submission S19.2 – Royal Wellington Golf Club requested amendments to objective SARZ-O2 to improve interpretation and to provide clarity that some open spaces are not appropriate to be accessible to the public i.e. those open spaces that are privately owned.

Council Evidence and Response to Submissions

294. The s42A report recommended that the amendments requested by S19.2 be accepted on the basis that they would appropriately address the access restrictions that exist on private Open Space zoned land.

Discussion and Recommendation

295. We agree with submission S19.2 and Ms Rushmere that the amendments are appropriate to clarify the provision of accessibility and positive contribution to health and wellbeing of communities is relevant to public open spaces, but that access to private open space is not available to the general public in the same way.

296. We recommend that objective SARZ-O2 is amended as set out in **Appendix 3**, and that submission S19.2 – Royal Wellington Golf Club be accepted for the reasons set out above and in **Appendix 1**.

SARZ-P2

Background

297. SARZ-P2 was notified as follows:

SARZ-P2	<i>Appropriate Development</i>
<p><u>The scale, location and design of development, including buildings and playing surfaces, in the Sport and Active Recreation Zone are managed to support the recreational use of the zone for a range of indoor and outdoor sports and protect recreational character of the zone.</u></p>	

Submissions

298. Submission S19.4 – Royal Wellington Golf Club requested policy SARZ-P2 be amended as the submitter considered that the proposed wording including ‘protect’ may have the effect of precluding development that supports the recreational use of the zone and its broader recreational character.

S42A Report Author Recommendation

299. The s42A report prepared by Ms Rushmere recommended that the requested amendment to replace reference to ‘protect’ with ‘to support’ on the basis that Sport and Active Recreation Zone sites that are privately owned generally have access restrictions compared to those sites that are publicly owned.

Discussion and Recommendation

300. We agree with Ms Rushmere that supporting the recreational character of the Sport and Active Recreation Zone is more appropriate than protecting it due to the presence of Sport and Active Recreation zoned sites that are privately owned.

301. We recommend that policy SARZ-P2 be amended as set out in **Appendix 3**, and that the relevant submission be accepted for the reasons set out above and in **Appendix 1**.

Hutt Valley Clay Target Club

Background

302. As notified, PC49 proposes to rezone the Hutt Valley Clay Target from General Rural Zone to the Sport and Active Recreation Zone. Accompanying the rezoning were proposed site-specific provisions including:

- (a) Reference to clay target towers as a compatible activity within proposed policy SARZ-P1;
- (b) The inclusion of the Hutt Valley Clay Target Club within the list of private sports clubs within proposed policy SARZ-P5;
- (c) A site-specific permitted activity rule for sports and active recreation activities on the site – subject to compliance with a proposed permitted activity standard SARZ-S7.
- (d) A proposed permitted activity standard SARZ-S1 limiting the maximum height of throwing towers on the site to 15m; and
- (e) A proposed site-specific permitted activity standard SARZ-S7 limiting the maximum number of shooting days per calendar year to 100 days during daylight hours.

303. As set out in the s32 evaluation report, the Club has been operating up to 80 shooting days

(daylight hours) per calendar year in accordance with a historic Certificate of Compliance¹⁶⁸. Based on the information provided to the Panel we understand the Certification of Compliance was issued in 2003.

Submissions

304. Submission S12.1 – John Hill opposed the proposed increase in shooting days at the club from 80 to 100 days per calendar year. The submission considered that shooting days should remain at 80 days as confirmed by the Certificate of Compliance due to concerns about safety regarding the setback from boundaries and the exposure of noise to neighbouring properties.
305. Submission S9.1 – Mangaroa Farms also opposed the proposed increase in shooting days from 80 to 100 days as set out in proposed SARZ-S7. The submission considered the proposed increase in shooting days seems out of alignment with the growing population in the area and the substantial impact on amenity that constant gunfire has on nearby areas. The submission goes on to note that the Club was founded over 100 years ago when few people lived in the area, but the population is now growing quickly and that the newly proposed ‘Mangaroa Settlement’ is incongruent with a firing range nearby. The submission requests shooting days be retained at 80 days per calendar year.
306. Submission S9.1 was supported by further submission FS8 – Mary Beth Taylor who cited the likely population growth in the surrounding area as a result of the proposed new ‘Settlement Area’ zoning, and the resulting effects on rural amenity values as a result of increased shooting days.

Council Evidence and Response to Submissions

307. The s42A report noted that in the absence of proposed SARZ-S7 limiting the number of shooting days to 100 per calendar year, the proposed rezoning of the site to Sport and Active Recreation Zone would result in the Club not being limited in the number of shooting days it could operate as the activity would become a permitted activity within the zone¹⁶⁹. The s42A advised that although the shooting activity has the potential to generate adverse noise effects on surrounding rural residential activities, there are no records of complaints relating to activities at the Club¹⁷⁰.
308. The s42A advised that discussions with the Club as part of the preparation of PC49 provisions resulted in an increase to 100 shooting days per calendar year being considered an appropriate compromise with the activity becoming a permitted activity, and this would allow flexibility for the Club to operate into the future¹⁷¹.

¹⁶⁸ PC49 S32 evaluation, at 12.65:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/pc49-section-32-report.pdf>

¹⁶⁹ At para. 188.

¹⁷⁰ At para. 189.

¹⁷¹ S42A report, at para 190.

309. The s42A explained that a separate proposed plan change had been notified in October 2023 (Plan Change 50), and that this proposes zoning the land surrounding the site a combination of Rural Lifestyle, Rural Production, and General Rural zones. PC50 also proposes to introduce an overlay around the gun club which would require new development within the acoustic overlay to meet relevant acoustic standards to maintain residential amenity considering the existing club activity¹⁷².
310. The s42A considered that the health and safety concerns raised by submission S12.1 were not matters that would be appropriate to address via the District Plan.
311. To address the concerns raised in the submissions relating to noise and associated adverse effects on rural amenity, the s42A acknowledged that an increase of an additional 20 shooting days per year could have a significant impact. In response, the number of shooting days was recommended to be reduced to 86 days per calendar year as a compromise to increase the level of flexibility for the Club without having a significant impact on the rural residential amenity of the surrounding community¹⁷³.

Information or Evidence Presented at the Hearing

312. We heard from submitter S12.1 – John Hill who was accompanied by Mr Bob Anker, who is not a submitter. Mr Hill advised that he owns land on the boundary with the Club land, and that his family owned four houses adjacent to the site before the Club was established, and that his family arrived in the Valley in 1962.
313. Mr Hill described the family’s experience of the evolution of the Club activities since it was established, which he stated began with one per month on Sundays with infrequent special shooting days on long weekends. Mr Hill explained that after the Karori Gun Club was closed, the Hutt Valley Clay Target Club expanded.
314. Mr Hill also described the background to the matters that led to the issuing of the Certificate of Compliance, which he confirmed occurred without him being informed.
315. In summary, Mr Hill explained his reasons for opposing the proposed increase in shooting days was due to noise effects on residents, which were amplified on account of the site being located within a natural amphitheatre.
316. The Hutt Valley Clay Target Club did not make a submission and is not a submitter. However, in response to a request by Mr Bruce Scott on behalf of the Club to be granted ten minutes to present to the Panel, the Panel exercised its discretion to grant the request on the basis that it would provide the Panel with an opportunity to ask questions about the operation of the Club and its effects¹⁷⁴. The Panel wishes to stress that it has not considered Mr Scott as a submitter.

¹⁷² At para. 191.

¹⁷³ At paras. 195-196.

¹⁷⁴ See Panel Minute 2: <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/pc-49-and-variation-1-minute-2-hutt-valley-clay-target-club.pdf>

317. In summary, the Panel gained the following information from Mr Scott:

- (a) The Club uses all the existing 80 days per calendar year, and this is carefully monitored.
- (b) Events are included in the total 80 day limit.
- (c) The scale and intensity of effects of the club now compared to when the Certificate of Compliance was issued is 'fairly similar' but may be a bit larger as the Club is the only venue available between Wellington and Palmerston North. There are more shooting days open to the public and more corporate events.
- (d) 'No complaints' private covenants were placed on a block of land owned by the Club before being sold approximately 20-30 years ago. This land is immediately to the north of the Club, and currently contains two houses. Any additional houses built in the future will also be subject to the 'no complaints' covenant. The other land in the surrounding area is not subject to the covenant.
- (e) The Club does not currently have a management plan or noise mitigation plan.

Discussion and Recommendation

318. The Panel is not satisfied that sufficient evidence or an understanding of the actual and potential adverse effects on the environment exists to demonstrate that an increase in shooting days is the most efficient and effective method to achieve the relevant objectives. We note that the s32 evaluation for the preparation of proposed standard SARZ-S7 is not accompanied by a noise assessment. This leaves the Panel in the position of considering an increase to the number of shooting days per year which is opposed on noise and amenity grounds by two submitters who are residents in the area.

319. Confirmation by Mr Scott of the existence of 'no complaints' covenants on adjacent nearby sites containing residential units also causes the Panel a degree of unease with the proposed increase in shooting days. We consider that although such covenants may legally overcome potential reverse sensitivity effects on the Club, this does not mean that noise effects from the Club do not constitute 'unreasonable noise' for nearby residents under the RMA.

320. We therefore recommend that the shooting days at the Club be amended to a maximum of 80 days per calendar year, which is the status quo. We consider that the most efficient and effective method to enable an increase in annual shooting days would most appropriately be addressed via the resource consent process. We expect that the resource consent process would logically need to identify and address actual and potential noise and amenity effects on the surrounding environment arising from additional shooting days at the Club. The resource consent process could also enable the identification of any necessary mitigation measures that could be put in place via a management plan and/or noise management plan.

321. Accordingly, we recommend that SARZ-S7 be amended to limit the maximum shooting days per calendar year to 80 days as shown in **Appendix 3**, and that the relevant submissions be accepted or accepted in part for the reasons set out above and in **Appendix 1**.

Section 32AA Evaluation

322. Please see **Appendix 6** for the mandatory RMA section 32AA evaluation for our recommended amendments to SARZ-S7.

Infrastructure

Submissions

323. As set out in the s42A report¹⁷⁵, submission S24 – Fire and Emergency New Zealand (FENZ) requested a number of amendments across PC49 provisions addressing the provision of additional infrastructure to provide for firefighting services within all three of the proposed Open Space Zones.
324. The requested amendments were for the inclusion of a new standard to be applied within all three of the proposed zones that would require that new buildings and structures to be connected to a public reticulated water supply where possible, and when not possible, it would need to be demonstrated that an alternative supply can be provided for satisfactory firefighting water supply. Consequential amendments that would be necessary for the implementation of the requested new standard were also requested. An example of the requested new standard is set out below:

NOSZ-S4

Buildings and structures that require water supply must be connected to a public reticulated water supply where one is available.

Where new buildings and structures have no available connection to a public reticulated water supply, or where the level of service required exceeds the level of service the reticulated water system provides, it must be demonstrated how an alternative and satisfactory firefighting water supply can be provided in accordance with the Fire and Emergency New Zealand and the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNA PAS 4509:2008.

Further advice and information about how adequate and accessible firefighting water supply can be provided to new developments, including alternative and satisfactory methods, can be obtained from Fire and Emergency New Zealand and the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNA PAS 4509:2008.

325. The submission requested these amendments on the basis that it is important that new buildings and structures have the infrastructure to provide firefighting services especially

¹⁷⁵ At paras. 250-253.

within Open Space areas as these areas can be remote, making access difficult¹⁷⁶.

S42A Report Author Recommendation

326. Whilst Ms Rushmere acknowledged the importance of providing a relevant water supply to buildings and structures, she considered the specific changes requested to be overly complicated. In response, Ms Rushmere recommended a simplified standard be inserted into the three zones requiring buildings to be provided with firefighting water supply as follows:

All new buildings shall be provided with firefighting water supply in accordance with the Fire and Emergency New Zealand Code of Practice SNZ PAS 4509:2008.

327. In response to a question from the Panel that arose during the hearing on how requested firefighting provisions should address areas that are not reticulated and where there is a lack of water pressure, Ms Rushmere set out the purpose of SNZ PAS 4509:2008, and included a list of matters relevant to rural areas and situations where insufficient water pressure exists.

328. In addition, Ms Rushmere advised that submissions on Council's rural zones review plan change PC50, that includes a proposed standard for water supply and firefighting sprinkler systems for residential units. Ms Rushmere advised that submissions on that plan change have requested that the 2008 Standard be updated to the latest 2020 Standard. Ms Rushmere confirmed that the scope available within the submissions on PC49 limited potential amendments to the 2008 standard, but suggested that an advice note could be added that may provide further clarify for plan users.

329. Ms Rushmere did not alter her recommendation to include reference to the 2008 Standard as per the s42A report.

Discussion and Recommendation

330. Based on the evidence provided to us from Ms Rushmere, it is the Panel's understanding that the 2008 standard has been superseded by a more recent version(s) of the standard. We are therefore reluctant to insert a standard that has been superseded, albeit we note there are other provisions in the District Plan that are in need of updating to refer to the most recent version of the standard¹⁷⁷. On balance, we consider that implementation of the District Plan in terms of addressing fire safety would be improved via including the amendments as recommended by Ms Rushmere, but note that the standard will need to be reviewed and updated as part of a future plan change.

331. It is the Panel's opinion that the inclusion of the new standard for all three open space zones will provide an improved situation for addressing firefighting requirements until the district plan is reviewed to update references to the new versions of SNZ PAS 4509, which

¹⁷⁶ S42A report, at para. 253.

¹⁷⁷ Operative provisions that will need to be reviewed to reflect the new standard include SUB-DEV3-S2, SUB-DEV3-S9, DEV2-S5, and DEV3-S15.

may include the introduction of similar provisions across all zones. It is our view that , on balance, including a standard that has been superseded represents a better resource management outcome regarding social effects compared to the absence of any standard for firefighting purposes.

332. We therefore recommend that the PC49 provisions be amended as set out in **Appendix 3**, and that the relevant submissions be accepted, accepted in part, or rejected for the reasons set out in **Appendix 1**.

Transport

Submissions

333. The s42A report summarises the suite of changes requested by submission S16 – Waka Kotahi across multiple PC49 provisions¹⁷⁸. We do not repeat the detail provided in the s42A report, but summarise the changes requested by submission S16 as intending to achieve greater integration of land use, urban design, and transport planning to actively contribute to a safe and efficient transport system.
334. For completeness, some of the requested changes were opposed by further submission FS7 – Greater Wellington Regional Council. In particular, the further submission opposed the requested application of a trip generation standard for rules relating to recreation and public access of open spaces.

Council Evidence and Response to Submissions

335. Regarding the amendments requested by submission S16 - Waka Kotahi, based on the evidence provided by Ms Rushmere within the s42A report¹⁷⁹ it is the Panel’s understanding that following the submission period on PC49, Council officers and the submitter have agreed to work collaboratively on transportation and infrastructure provisions across the District Plan via a future plan change. On this basis, Ms Rushmere recommends no amendments be made to PC49 provisions in response to the entire submission by Waka Kotahi¹⁸⁰.

Discussion and Recommendation

336. The Panel notes submission S16 – Waka Kotahi has not been withdrawn and therefore the Panel must still consider the changes its requests. In the absence of any evidence to the contrary, we accept the position put forward by Ms Rushmere that the submitter has accepted that the requested changes to PC49 will be addressed via a comprehensive future plan change.
337. The Panel also notes that the relevant further submitter FS7 – Greater Wellington Regional

¹⁷⁸ S42A report, section 10 – Topic 6: Transport, page 44.

¹⁷⁹ At paras 245-246.

¹⁸⁰ S42A report, at para. 249.

Council may have decided not to provide evidence for the hearing after having read the position put forward by the s42A report.

338. For the avoidance of doubt, the Panel has considered all requested changes within submission S16 and considers the submission to raise important matters. The Panel agrees with Ms Rushmere that it would be most appropriate to address them in a comprehensive fashion across all relevant District Plan chapters via a future plan change.
339. We recommend that the relevant transportation provisions across PC49 be confirmed as set out in **Appendix 3**, and that the relevant submissions and further submissions be accepted or rejected for the reasons set out above and within **Appendix 1**.

General Requested Amendments

Submissions

340. The s42A report identifies all relevant submissions that relate to general matters that do not fit under other categories addressed in the s42A report. We summarise these below, but reference must be made to Appendix 1 to view all Panel recommendations on all submissions and further submissions requesting general amendments.
341. Submission S2.1 and 2.2 – Pinehaven Tennis Club requested the land on which they operate be zoned as Sport and Active Recreation Zone, or to amend the provisions to allow for larger scale development for any potential necessary replacement of existing buildings and structures on site. Submission S2.1 was supported by further submission FS11 – Pinehaven Progressive Association.
342. Submission S8.1 – Donna Galbraith supported the zoning of Oxford Park as Sport and Active Recreation Zone but requested that provisions be amended to prevent the development of any sports clubs, structures, or buildings in the park, stating that the park is not large enough to accommodate such facilities.
343. Submissions S11.1 - S11.4 – Hannah Stanfield, although generally supportive of PC49, requested:
- (a) The errors within the objectives, policies and rules are corrected so that there are no gaps for unintended consequences to occur; and
 - (b) The wording is reviewed across the provisions to improve internal consistencies, correcting errors and making them easier to interpret; and
 - (c) The objectives and policies are reviewed to make sure they achieve the good outcomes for parks; and
 - (d) Any other changes that would achieve the above.
344. Submission S26.16 and S26.17 – Greater Wellington Regional Council requested changes to OSZ-S1 and SARZ-S1 regarding the reference to the lighting standard 'AS/NZS1158.3.1

Lighting for roads and public spaces’ to ensure light pollution from light poles/floodlights is managed. Submission S26.17 requested that where light spill is mentioned within the proposed plan change, that ‘over lighting’ is also referenced.

345. Submission S26.1 – Greater Wellington Regional Council requested that while the Council’s Natural Hazards plan change is developed, and to prevent inappropriate subdivision and development in areas of high flood risk to give effect to RPS Policy 51, that the existing operative District Plan natural hazard management provisions are retained for the Open Space and Recreation Zones.
346. Submissions S20.3 and S20.4 – Wooster and Teasdale Families requested that specific activities be enabled within the riverbed area of their land which is proposed to be rezoned from Open Space Zone to Natural Open Space Zone, including subdivision, earthworks, and commercial recreation. These submissions were opposed by further submission FS7 – Greater Wellington Regional Council, on the basis that the riverbed is a highly hazardous area where only open space land use is appropriate. Submission S20.4 included specific suggested amendments including:
- (a) Deleting the provisions which direct “avoidance” or “protection” outcomes, or otherwise amending these provisions so that they provide a feasible consenting pathway for the desired activities listed in the submission.
 - (b) Identifying the desired activities listed in the submission as being complementary activities under OSZ-P1 or alternatively introducing new policies to specifically provide for these activities where their adverse effects on other activities and the natural character and amenity values of the Natural Open Space Zone are “minimised”. The submission suggests that the term “minimised” could be defined in the district plan, such as: *“Reduce to the smallest amount reasonably practicable. Minimised, minimising and minimisation have the corresponding meaning”*.
 - (c) Amending the matters of discretion (for restricted discretionary activities) to include consideration of other benefits such as those associated with:
 - (i) access (including bridges);
 - (ii) natural hazard works and structures;
 - (iii) earthworks/excavation;
 - (iv) quarrying;
 - (v) use or development of land outside “the site”; and
 - (vi) benefits associated with offsetting or compensation.

Council Evidence and Response to Submissions

347. Regarding submission S2.1 and 2.2 – Pinehaven Tennis Club, Ms Rushmere noted that the land upon which the Club operates is to be zoned as Sport and Active Recreation Zone by

PC49, therefore achieving the request of the submissions.

348. Ms Rushmere did not recommend any amendments in response to submission S8.1 – Donna Galbraith on the basis that she considered that the proposed rules and standards within the Sport and Active Recreation Zone are sufficient to maintain neighbouring amenity values. The submission is specific to Oxford Park being the field behind Oxford Crescent School.
349. In response to submissions S11.1 – S11.4 -Hannah Stanfield, Ms Rushmere noted in the s42A report that amendments had been recommended and will continue to be recommended as errors and necessary consequential amendments are identified through the process.
350. With respect to the changes requested by submissions S20.3 and S20.4 – Wooster and Teasdale Families, Ms Rushmere did not recommend any amendments to PC49 in response, and made the following points¹⁸¹:
- (a) Activities that take place within the riverbed fall under the jurisdiction of the Regional Council under s30 of the RMA, it would not be appropriate to comment on the requested amendments related to the riverbed of Te Awa Kairangi / The Hutt River.
 - (b) Activities that take place on the surface of water do fall under the jurisdiction of the Upper Hutt City Council under s31 of the RMA, which are managed via the operative ASW - Activities on the Surface of Water chapter of the District Plan. This chapter of the District Plan is not within the scope of PC49.
351. With respect to submission S26.1 – Greater Wellington Regional Council, Ms Rushmere, advised that the existing provisions for the management of natural hazards will continue to apply via the Natural Hazards chapter of the District Plan. Consequently, Ms Rushmere did not recommend any amendments be made to PC49 provisions.
352. Ms Rushmere recommended submissions S26.16 and S26.17 – Greater Wellington Regional Council be rejected on the basis that lighting provisions are contained in the existing artificial light emissions provisions of the District Plan, but she noted that these provisions will be reviewed as part of a future separate plan change process.

Discussion and Recommendation

353. Regarding submissions S2.1 and 2.2 – Pinehaven Tennis Club the Panel notes that, as pointed out by Ms Rushmere in the s42A report, that the Pinehaven Tennis Club is proposed to be zoned Sport and Active Recreation Zone by PC49. The Panel assumes the submission requesting the Sport and Active ‘Residential’ Zone is a typographical error. On this basis, we agree with Ms Rushmere that the changes requested by the submission have already been achieved via the notification of PC49.

¹⁸¹ As summarised by the Panel from paragraphs 286-288 of the s42A report.

354. We agree with Ms Rushmere that no changes to PC49 are necessary to address the concerns raised by submission S8.1 – Donna Galbraith. We agree that that the proposed bulk and location standards for structures and buildings within the Sport and Active Recreation Zone are sufficient to maintain neighbouring amenity values.
355. We agree with submission S11.1 – S11.4 -Hannah Stanfield and Ms Rushmere that PC49 contains errors and opportunities to improve clarity and consistency. We recommend a number of amendments across multiple provisions that are consistent with the changes requested by these submissions. The Panel identified the errors below during its deliberations on the proposed provisions. The Panel records the following unexhaustive list of amendments we recommend to PC49 provisions under the scope provided by submissions S11.1 – S11.4:
- (a) The addition of headings to permitted activity standards to assist with plan navigation and legibility e.g. 'Building Height'.
 - (b) NOSZ-R1: amendments the wording of the restricted discretionary activity rule to make it clear that resource consent is required where compliance is not achieved with 'one or more' of the listed standards; and to delete the 'and' within the list to eliminate potential confusion.
 - (c) NOISE R1, R2, and R6: Correct the Speedway zone reference within the 'zones' column.
 - (d) NOSZ-R19: add 'activity' to the end of the rule.
 - (e) NOSZ-S1 – S3 removal of reference to 'sporting' from the matters of discretion on the basis that the purpose of the Natural Open Space Zone as described in NOSZ-O1 does not include sporting purposes.
 - (f) OSZ-S1: Delete the access design diagram from the deleted standard.
 - (g) Districtwide Chapters: update the 'Zones' column to include the newly created open space zones and the change in zoning of the Speedway.
 - (h) Definition for 'Sport and Active Recreation': amend reference from 'motorised activities' to 'motorised recreation'.
 - (i) SUB-OSRZ-R1.2: Add the matters of discretion from SUB-OSRZ-R1.1 to remove the potential for misuse of the rule.
 - (j) SUB-OSRZ-R2.2: Add the matters of discretion from SUB-OSRZ-R2.1 to remove the potential for misuse of the rule.
 - (k) SUB-OSRZ-R3.2: Add the matters of discretion from SUB-OSRZ-R3.1 to remove the potential for misuse of the rule.
 - (l) The correction of minor typographical errors.

356. During the Panel’s consideration of the proposed provisions while deliberating we observed that the operative permitted activity standard OSZ-S1 – *Access standards for land use activities* is not present within any of the three proposed open space chapters. We observed that the access standard would only apply only where subdivision occurs via proposed standard SUB-OSRZ-S1. Having reviewed the s.32 evaluation report it is clear to us that the access standard is within the scope of PC49¹⁸². However, it is not clear to us whether the absence of the access standard for land use activities was intentional or a drafting error. We recommend that if it was a drafting error, that submission S11 be used to make the correction. Please note that as a result of this uncertainty we have not made this recommended change in **Appendix 3**. However, in the event that the omission of the standard is an error, we recommend that, prior to making decisions on the plan change, the standard be added to all three proposed open space zone chapters alongside the necessary consequential amendments to the relevant rules to refer to the standard. We record this recommendation in **Appendix 1** with respect to submission S11.1 – Hannah Stanfield.
357. The Panel also notes that there is a requirement to make renumbering amendments to incorporate Variation 1 provisions into the NOSZ chapter. The Panel understands that the Council intends to use Clause 16(2) of Schedule 1 of the RMA to make these amendments. If it would prove more efficient for the Council, we recommend Council makes these amendments to PC49 provisions via the scope provided by submission S11 – Hannah Stanfield, and we record this recommendation under submission S11.1 in **Appendix 1**.
358. Regarding submissions S26.16 and S26.17 – Greater Wellington Regional Council, we agree with Ms Rushmere that it would be most appropriate to review the lighting standards and associated provisions when the Council reviews the relevant provisions as part of a future plan change.
359. Concerning submission S26.1 – Greater Wellington Regional Council’s request that the existing natural hazard provisions of the operative District Plan continue to apply to the Open Space and Recreation Zones, we note Ms Rushmere’s advice in the s42A report that the existing hazard provisions are considered sufficient to manage subdivision and hazard management in all zones. Further to this, the Panel is not entirely certain exactly what the submission is requesting, but we note that as the natural hazard provisions sit within the District-wide section of the District Plan, and these are not proposed to be amended via PC49. It is therefore logical to us that the natural hazard provisions will continue to apply regardless of any changes in zoning that will occur under PC49.
360. With respect to the changes requested by submissions S20.3 and S20.4 – Wooster and Teasdale Families, we agree with Ms Rushmere that the requested activities and development either fall under the jurisdiction of the Regional Council or are already

¹⁸² As confirmed by the table at 5.1.7 of the s32 evaluation report.

managed via operative district plan provisions within the Activities on the Surface of Water chapter of the District Plan. We also agree with Ms Rushmere that amendment to the Activities on the Surface of Water chapter are beyond the scope of PC49. We therefore do not recommend any amendments in response to submissions S23.3 and S20.4.

361. We recommend that amendments be made to PC49 provisions as set out in **Appendix 3**, and that all relevant submissions and further submissions be accepted, accepted in part, or rejected for the reasons set out above and within **Appendix 3**.

Section 32AA Evaluation

362. Please see **Appendix 6** for the mandatory RMA section 32AA evaluation for our recommended amendments to PC49 provisions to correct errors, improve clarity, consistency and address unanticipated outcomes.

13.0 Variation 1

Background

363. Variation 1 came about in response to multiple submissions on PC49 requesting that the Silverstream Spur site be included in the plan change. Council determined that these submissions were beyond the scope of PC49, thus giving rise to proposed Variation 1 to PC49.

Zoning of the Silverstream Spur Site

364. As notified, Variation 1 proposed to rezone the Council-owned portion of the Silverstream Spur from a mix of General Rural Zone and General Residential Zone to a single zoning of Natural Open Space Zone. At the time of notification of Variation 1 the site also had a Residential Conservation Precinct overlay applying to the General Residential Zone portion of the site. As we set out in section 9 above, we have confirmed that this overlay was removed via the Council's IPI leaving only the General Residential Zone in place. On this basis, we do not discuss the Residential Conservation Precinct further.

Submissions

365. As set out in the s42A report prepared by Ms Thomson and updated by Ms Rushmere¹⁸³, 68

¹⁸³ At para 117.

of the 94 submissions received on Variation 1 supported the proposed rezoning of the site to Natural Open Space Zone, while other submissions mention supporting the proposed zone change in their discussion when providing their reasons for support or opposition to other proposed Variation 1 provisions.

366. The submissions supporting the proposed rezoning are supported by the majority of further submissions. As we do not list all the relevant submissions, please see section 6 of the s42A report and **Appendix 2** to our report to view all relevant submissions and further submissions.
367. The reasons specified within the submissions in support of the rezoning were varied, but we have summarised them as:
- (a) It will help protect and reinforce a natural east-west corridor across the southern end of Upper Hutt providing a natural corridor for migration of wildlife and birds in the area and an important link between other green spaces.
 - (b) It will help preserve the character of the surrounding suburbs.
 - (c) Natural Open Spaces provide a valuable contribution to the wellbeing of the Upper Hutt community and should be protected for future generations.
 - (d) The Silverstream Spur should be used for recreation, conservation, and customary purposes exclusively with an opportunity to provide walking and biking tracks and supporting recreational infrastructure.
 - (e) The Silverstream Spur defines the gateway to Upper Hutt.
 - (f) The Silverstream Spur will provide protection and conservation of natural character, indigenous vegetation, and ecological and landscape values.
 - (g) It will strengthen its importance to Tangata Whenua and iwi in the area.
368. Submission S82.2 – The Guildford Timber Company Ltd opposed the rezoning of the entire site to Natural Open Space. The submission requested that the existing General Residential Zone portion of the site is retained, and only the portion of the site that is zoned Rural Hills Zone¹⁸⁴ be rezoned to Natural Open Space Zone.
369. The amendments requested by submission S82.2 to the rezoning of the site is conditional on Variation 1 including:
- ... appropriate policies and rules are included in the variation to efficiently and effectively enable construction and operation of a new collector road and associated services between Kiln Street and the Southern Growth Area, including associated earthworks and vegetation clearance.*

¹⁸⁴ The Rural Hills Zone was renamed 'General Rural Zone' in accordance with the National Planning Standards on 6 October 2021.

370. We turn to the submitter's requested changes to other Variation 1 provisions relevant to the construction and operation of a new collector road and associated services between Kiln Street and the Southern Growth Area within the parts of our report where we address proposed rule NOSZ-R15 and Policy NOSZ-P6.
371. One submission was received in opposition to the proposed rezoning of the site to Natural Open Space, however as we set out as a procedural matter above, this submission was subsequently withdrawn prior to the hearing. Consequently, the submission is not a matter we have considered further other than to record its withdrawal and identify the relevant further submission in **Appendix 2**.

S42A Report Author Recommendation

372. The s42A report advised that the purpose of the proposed Natural Open Space Zone is to allow for activities and development of an appropriate scale to occur in spaces where there is strong natural character with associated ecological and landscape values.
373. With respect to the matters raised by submission S82.2 – Guildford Timber Company, the s42A report pointed out that the Council's Intensification Planning Instrument and the incorporation of the Medium Density Residential Standards would enable higher density permitted activity development on the portion of the site zoned General Residential, but that the Council and the community has no interest in developing the land for residential activities. For these reasons the s42A considered that any form of residential zoning on the site would be inappropriate.

Submitter Presentations and Evidence

374. As set out in the s42A report¹⁸⁵, the majority of submissions and further submissions supported the proposed rezoning of the Silverstream Spur site to Natural Open Space Zone. In summary, submitters and further submitters supported the proposed rezoning on the basis that it reflected the original intention of the land when the Council acquired the site, and was the most appropriate zoning to reflect the existing and desired future values and community uses of the site. We heard from many submitters on this point over the course of the hearing.
375. Submission S82.2 – Guildford Timber Company supported the proposed rezoning of the General Rural Zone component of the site only. The submission requested that the operative General Residential Zone be retained over part of the site. The submission considered that by zoning the entirety of the Spur for open space purposes, the efficiency of providing a major collector road through the Spur is not optimised. The submission considered¹⁸⁶ that provision should be made for housing development alongside a proposed road to enhance the investment in new servicing and the efficient integration of

¹⁸⁵ At section 6.

¹⁸⁶ At page 4, clause (f).

infrastructure and development.

376. Submission S82.2 was opposed by ten further submissions including but not limited to FS10 – Save Our Hills, FS17 – Forest & Bird, FS19 – Silver Stream Railway Inc, and FS20- Caleb Scott. Further submissions noted that the intent of the variation is to rezone the site to Natural Open Space Zone. Some further submissions considered that the existing General Residential zoning is a historical error and that the site was always intended to be community open space/ reserve purposes.
377. Submitter S82’s position on the zoning of the site was revised via the planning evidence of Mr Hall, who stated that¹⁸⁷:

‘GTC acknowledges as outlined in the Council’s Officer’s Report that Spur land will be retained in Council ownership. Consequentially GTC has revised its position around some of the relief sought in its submission which is discussed further below. As the Spur is being retained in Council ownership and will not be provided to GTC as part of the land exchange for residential land, GTC is no longer actively opposing the Open Space Zoning’

Discussion and Recommendation

378. We agree with the s42A report authors that the most appropriate zoning of the site is Natural Open Space Zone. As a community-owned site that is largely covered in a mix of indigenous and exotic vegetation, we are not convinced by submission S82.2 that the existing General Residential Zoning should be retained to optimise providing a major collector road through the Spur. As we discuss elsewhere in this report, the provision of infrastructure within all zones is provided for in other chapters of District Plan. We acknowledge that a consenting path for a road through the site under the proposed zoning would likely present a greater challenge than if the Spur were to remain General Residential, however we do not consider this to be a convincing reason to retain the existing General Residential zoning on part of the site. It also does not take into account the SNA.
379. We recommend the zoning of the Silverstream Spur site be amended to Natural Open Space as shown in **Appendix 4**, and that all relevant submissions and further submissions on the zoning of the Silverstream Spur site be accepted, accepted in part, or rejected for the reasons set out above and in **Appendix 2**.

¹⁸⁷ *Statement of Evidence of Michael Hall on Behalf of Guildford Timber Company Ltd*, dated 17 November 2023, at 6.12: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-michael-hall-planning-gtc.pdf>

Ecological Values and Spatial Extent of SNA

Submissions

380. As set out in the s42A report¹⁸⁸, the ecological values and the spatial extent of the identified SNA on the site attracted a high level of interest from submissions and further submissions. In general, the majority of submissions and further submissions requested the SNA be identified and protected from specific provisions intended to enable infrastructure within the SNA. Many submissions also requested the extent of the proposed SNA be extended to include other areas that submitters considered warranted inclusion for their ecological and potential ecological values.
381. In summary, the reasons for submitter and further submitter support for the proposed SNA included:
- (a) The identification and protection of the SNA is consistent with Objective 16, and is required by Policies 23 and 24 of the Regional Policy Statement.
 - (b) The protection and enhancement of the Significant Natural Area will benefit native flora and fauna and biodiversity in the area by providing an important ecological corridor for birds linking both sides of the valley helping to protect all native bird species.
 - (c) A significant feature of Upper Hutt is the beauty of native bush on the hills that surround it which should be protected for future generations.
 - (d) With the view of Climate Change protection of Significant Natural Areas will enhance the carbon absorption within Upper Hutt.
 - (e) Protection of the SNA from development will avoid fragmentation and loss of buffering or connectivity within the Significant Natural Areas and between other indigenous habitats.
 - (f) Significant Natural Areas should be continuous to maintain integrity of the flow of natural biota.
 - (g) The SNA is a taonga which needs to be preserved for current and future generations.
382. The proposed SNA attracted opposition from submissions S82.2, S82.4, S82.6, and S82.7 – The Guildford Timber Company on the basis that the submitter considered that the variation did not contain sufficient ecology evidence to demonstrate that an SNA existed on the site. The submission also requested that the UH070 SNA notation shown on the notified variation map that affected adjacent properties be deleted. These submissions were opposed or supported in part by numerous further submissions.
383. A number of submissions requested the extent of the proposed SNA be reviewed and

¹⁸⁸ At section 7: Topic 4: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/updated-council-evidence-report-section-42a-report-for-variation-1-to-pc49.pdf>

amended to include other areas that submitters considered were worthy of inclusion. These submissions included S42.2 – Pat van Berkel, S55.3 – Jason Durry, S58.2 – Marie Harris, S86.3 – Simon Edmonds, S87.1 – David Grant Taylor, S88.4 – Silver Stream Railway Inc, S90.3 – Rhys Lloyd, and S91.2 – Save Our Hills Inc. These submissions were supported by numerous further submissions which we do not list in our report but are included in Appendix 2.

S42A Report Author Recommendation

384. The updated s42A report prepared by Ms Rushmere for the reconvened hearing on ecology matters was informed by additional ecology evidence prepared on behalf of the Council by Mr Goldwater of Wildlands Consultants¹⁸⁹. Mr Goldwater's evidence built upon earlier ecological assessments undertaken by Wildlands Consultants in 2018, 2020 and 2022¹⁹⁰. The updated ecology evidence provided an updated assessment of the SNA on the site against the significance policies in the NPS-IB and Policy 23 of the RPS¹⁹¹.
385. Based on the evidence of Mr Goldwater, Ms Rushmere recommended amendments to the extent of the SNA to exclude a north-western gully from the notified SNA extent. It was Mr Goldwater's opinion that this area was unlikely to meet one or more of the assessment criteria under RPS Policy 23 or the NPS-IB for inclusion in the SNA. With the exception of excluding this north-western gully, Ms Rushmere's recommended extent of the SNA was consistent with the notified boundaries of the proposed SNA.
386. Mr Goldwater's evidence also provided a response to the ecology evidence prepared by Dr Keesing for submission S82 – The Guildford Timber Company that was provided in advance of the initial hearing. Contrary to Dr Keesing's opinion, Mr Goldwater considered that an area of ponga-mamaku tree fernland, which is part of the notified extent of the SNA, satisfies the linkage/connectivity and buffering attributes of the Ecological Context criterion in RPS Policy 23 and the NPS-IB¹⁹². Consequently, Mr Goldwater recommended its retention as part of the SNA.
387. In her right of reply, Ms Rushmere recommended the retention of the north-western gully and the retention of the of ponga-mamaku tree fernland.

Submitter Information and Evidence

388. The Panel determined that the reconvened hearing would be intentionally facilitated and offer parties the opportunity to canvas points and explain matters in contention to assist the Panel understand the matters more clearly. The Panel very much appreciated the willingness of all parties to work in a collaborative and courteous way to clarify complex

¹⁸⁹ *Statement of Evidence of Nicholas Goldwater on Behalf of Upper Hutt City Council*, dated 8 March 2024: [appendix-d-expert-ecological-evidence-0803.pdf \(upperhuttcity.com\)](https://www.upperhuttcity.com/appendix-d-expert-ecological-evidence-0803.pdf)

¹⁹⁰ Updated Variation 1 s42A report, at paras 152-155.

¹⁹¹ Updated Variation 1 s42A report, at para 156.

¹⁹² At para 28.

issues.

389. During the reconvened hearing the Panel was presented with PowerPoint presentations by Mr Skerman¹⁹³, Mr Grant-Taylor¹⁹⁴, Mr Scott¹⁹⁵, and Mr Edmonds¹⁹⁶ who documented a joint site visit through the Spur on 3 April 2024. These submitters visited and photographed areas of indigenous vegetation across site. This included visiting and photographing areas that had not been visited by either Dr Keesing or Mr Goldwater.
390. Although we cannot not recommend amendments to the extent of the SNA in the absence of ecological evidence, we record that the information and photographs provided by these submitters was invaluable in providing the Panel with a better understanding of the areas of indigenous vegetation within the site. The information also greatly assisted us when questioning both ecological experts to determine whether any of the information and photographs provided by these submitters resulted in any changes to their professional opinions on the most appropriate extent of the SNA.
391. Ecology evidence was provided by Dr Keesing on behalf of submission S82 – The Guildford Timber Company¹⁹⁷. Following the circulation of the ecology evidence prepared by Mr Goldwater for the Council, submitters were invited to update their submissions and evidence¹⁹⁸. Dr Keesing took this opportunity to provide updated ecology evidence on behalf of submission S82.
392. In his evidence provided in advance of the initial hearing, Dr Keesing considered that the Spur habitat he measured during his numerous visits to the site did not contain any values or conditions that can meet either the RPS policy 23 or the new NPS IB significance criteria¹⁹⁹. Dr Keesing provided a map identifying a much-reduced extent of the SNA that he considered identified the only area on the site that could meet the criteria to be considered a SNA²⁰⁰. Dr Keesing advised he would visit part of the site he had not visited before. Coincidentally but unknown at the time, this was the north-western gully recommended for removal in Mr Goldwater’s evidence. Dr Keesing advised he would provide the Panel with his opinion on the values of this area during the initial hearing.
393. In summary, Dr Keesing’s evidence provided in advance of the initial hearing considered that:

¹⁹³ S48.

¹⁹⁴ S87.

¹⁹⁵ S78, FS20.

¹⁹⁶ S86.

¹⁹⁷ Statement of Evidence of Dr Vaughn Keesing on Behalf of Guildford Timber Company, dated 17 November 2023: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-dr-vaughan-keesing-ecology-gtc.pdf>

¹⁹⁸ See Panel Minute 9.

¹⁹⁹ Statement of Rebuttal Evidence of Dr Vaughn Keesing on Behalf of Guildford Timber Company, dated 17 November 2023. At paragraph 7.11.

²⁰⁰ Figure 5, page 16.

(a) *While the Spur is predominantly native in vegetation cover, that cover is mostly tree fern with common under canopy scrub and there is little evidence that the area is progressing with any speed to more representative kamahi-beech forest.*²⁰¹

(b) *The Spur is not an area of importance for local fauna, and is not an important buffer or corridor or has any other important ecological function that suggests it needs to be retained to protect indigenous biological diversity of the wider area.*²⁰²

394. Dr Keesing's opinion on the most appropriate extent and values of the SNA remained consistent with his original evidence.

395. With respect to the ecology evidence prepared by Mr Goldwater for the Council, Dr Keesing considered it to be flawed and that the area of ponga-mamaku tree fernland referred to in Mr Goldwater's evidence did not satisfy the linkage/connectivity and buffering attributes of the Ecological Context criterion in RPS Policy 23 and the NPS-IB. Dr Keesing also made the observation that having walked the edge of the north-western gully recommended for removal by Mr Goldwater, he considered the indigenous cover to be better than the areas Dr Keesing sought to be removed, with greater representativeness. Dr Keesing confirmed he would likely retain that area as an SNA²⁰³.

Discussion and Recommendation

396. As a preliminary comment to clarify how the Panel has approached the consideration of the changes requested to the mapped extent of the proposed SNA, the Panel wishes to make it abundantly clear that our consideration of the most appropriate boundaries for the SNA has been carried out in the absence of the consideration of any specific potential route for a road or 'transport corridor' through the site.

397. The Panel's firm view is that the identification of the extent of significant natural areas must be based on an assessment of the ecological values present against the relevant criteria, as conducted by a suitably qualified and experienced ecologist. This approach was adopted to ensure the Panel's recommendations are consistent with the requirements of section 6(c) of the RMA to identify areas of significant indigenous vegetation and significant habitats of indigenous fauna – using the criteria specified by RPS Policy 23 and Appendix 1 of the NPS-IB.

398. To effectively and efficiently get to the bottom of the specific areas of agreement and disagreement between the ecology experts during the reconvened hearing, we took the liberty of questioning both experts concurrently on their opinions on specific parts of the proposed SNA with the assistance of maps and a whiteboard. From our questioning of the two experts we learned that:

²⁰¹ At 11.2.

²⁰² At 11.3.

²⁰³ At para 3.16: https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/keesing-vaughan-ecology-rebuttal-evidence-plan-change-49-final_15.03.24.pdf

- (a) Having viewed submitter presentations and photographs of the north-western gully, Mr Goldwater changed his opinion to recommend retaining the north-western gully in the SNA.
 - (b) Notwithstanding Dr Keesing’s evidence to the contrary, both ecologists agreed on all parts of the SNA being significant to the level sufficient to justify their inclusion in the SNA – with the clear exception of the area of ponga-mamaku tree fernland²⁰⁴. In terms of this area of indigenous vegetation where the experts did not agree, Mr Goldwater maintained his opinion that the area plays an important connectivity and buffering role. Dr Keesing maintained his position that it did not.
399. The Panel notes Ms Rushmere incorrectly stated in her right of reply that the two ecological experts agreed on the retention of the ponga-mamaku tree fernland area. We record that the ecological experts agreed on the retention of the north-western gully but retained their professional difference of opinion on the significance of the ponga-mamaku tree fernland area.
400. In determining which ecology evidence we prefer, we are mindful of Dr Keesing’s evidence where, with respect to the ecological context criteria of RPS Policy 23 and the NPS-IB, he states:
- One of the problems with the Ecological Context criteria is that linkage and buffering requirements or functions and their importance are virtually impossible to prove or disprove.*²⁰⁵
401. It is our understanding that the Ecological Context criterion is directly relevant to connectivity and buffering, and that this is the key area of disagreement between the two ecologists regarding the values of the ponga-mamaku tree fernland area.
402. Therefore, we adopt a precautionary approach and prefer the evidence of Mr Goldwater. We note that the difference in opinion between the two ecology experts would be resolved via any future resource consent application process for development within the ponga-mamaku tree fernland portion of the SNA. We consider the resource consent process would logically require detailed ecological survey of the ponga-mamaku tree fernland area to determine its role in connectivity and buffering to other areas within the SNA.
403. We recommend that the SNA be confirmed as shown in **Appendix 4**, and that all relevant submissions and further submissions be accepted, accepted in part or rejected for the reasons set out above and in **Appendix 2**.

²⁰⁴ During the hearing the Panel allocated the name ‘the Middle Area’ for the ponga-mamaku tree fernland area.

²⁰⁵ *Statement of Rebuttal Evidence of Dr Vaughn Keesing on Behalf of Guildford Timber Company*, dated 17 November 2023. At para 3.10.

Infrastructure

Summary

404. The majority of submissions opposed the site-specific infrastructure provisions proposed by Variation 1. We do not address each of these submissions in our report. Instead, we address only the submissions on the specific notified provisions below.
405. Please see **Appendix 2** for the Panel’s recommendations on all submissions and further submissions.

NOSZ-P6

Background

406. Proposed policy NOSZ-P6 seeks to enable infrastructure, including a transport corridor, within the Silverstream Spur at an appropriate scale, location, and design. The stated intent of the infrastructure corridor is to provide support for the development of the Southern Growth Area and open access to the Silverstream Spur for range of passive recreation, conservation, and customary opportunities.
407. NOSZ-P6 was notified as follows:

NOSZ-P6	Silverstream Spur Infrastructure
<p><u>Enable infrastructure including a transport corridor within the Silverstream Spur (Pt Sec 1 SO 34755, Parcel ID: 3875189) at an appropriate scale, design, and location to</u></p> <ol style="list-style-type: none"><li data-bbox="389 1227 1145 1261">1. <u>Provide for a range of passive recreation opportunities; and</u><li data-bbox="389 1265 1139 1299">2. <u>Support for the development of the Southern Growth Area.</u>	

Submissions

408. Submission S19.2 – Greater Wellington Regional Council supported NOSZ-P6 but requested an amendment to signal an initial preference for public transport and multi-modal transport connections. This submission was generally opposed by further submissions, but was supported in part by FS12 – The Guildford Timber Company to the extent that it was consistent with the relief sought by its own submission. Three other further submissions²⁰⁶ supported or supported in part submission S19.2 or the wider submission of Greater Wellington Regional Council. However, when the further submissions are read it is clear that these further submitters continue to oppose provisions intended to enable infrastructure on the site.
409. Submission S41.3 – Bob McLellan opposed NOSZ-P6 because the submission considered

²⁰⁶ FS23 – Tony Chad, FS24 – Mary Beth Taylor, and FS9 – Graham Bellamy.

that there is no requirement for the infrastructure to provide for a range of recreation opportunities.

410. Submission S74.2 – Forest & Bird requested that either policy NOSZ-P6 be deleted, or amended in combination with the submitter’s requested amendments to policy NOSZ-P7. The submission requests the deletion of clause 2 entirely on the basis that reference to supporting the development of the Southern Growth Area is inconsistent with purpose of the Natural Open Space Zone as set out in PC49 via the proposed objectives, which state that the purpose of the zone is for “*passive recreation, customary and conservation activities*” and for activities to “*maintain the amenity values and natural character of the Natural Open Space*”. The submission considered that:

- (a) Policy NOSZ-P6 inappropriately provides for roading access for the Southern Growth Area, and this will have a detrimental effect on the natural character of the Silverstream Spur.
- (b) The scale of activity associated with a road would result in the loss of indigenous vegetation and division effects on the SNA, and this is inconsistent with direction of policy 24 of the Regional Policy Statement.
- (c) The policy is unnecessary to provide for passive recreation as this is already provided for in the proposed PC49 Natural Open Space Zone provisions.
- (d) The policy could be inappropriate for the proposed SNA on the site.

411. Submission S74.2 – Forest & Bird requested that if the policy is not deleted that it be amended as follows:

NOSZ-P6	Silverstream Spur Infrastructure
<p>Only consider enabling <u>Enable</u> infrastructure including a transport corridor within the Silverstream Spur (Pt Sec 1 SO 34755, Parcel ID: 3875189) at an appropriate scale, design, and location to</p> <ol style="list-style-type: none"> 1. Provide for a range of passive recreation opportunities; and 2. Support for the development of the Southern Growth Area. <p><u>where the effects of such development are managed in accordance with NOS-P7.</u></p>	

412. Submission S74.2 was supported by FS19 – Silver Stream Railway Inc on the basis that the requested removal of the site specific provisions that would enable any infrastructure/ transport corridor on the Spur would be in keeping with the proposed Natural Open Space Zoning. A number of other further submissions²⁰⁷ supported the amendments requested to NOSZ-P6 by submission S74.2.

²⁰⁷ Including but not limited to further submissions FS8 – Helen Chapman; FS9 – Graham Bellamy; FS10 – Save Our Hills (Upper Hutt) Incorporated; FS13 – Duncan Stuart.

413. The submission was opposed by FS12 – Guildford Timber Company on the basis that the further submitter considered that a reasonable and navigable consenting pathway needs to be assured for a proposed transport corridor on the Spur, and that the submission’s requested amendments would favour the protection of biodiversity values in the first instance over making provision for infrastructure.
414. The concerns expressed in submission S74.2 with the wording and potential consequences of policy NOSZ-P6 were shared by submitter S79 – Upper Hutt Branch of Forest & Bird, but requested alternative amendments to NOSZ-P6 as follows:

NOSZ-P6	Silverstream Spur Infrastructure
<p>Enable infrastructure including a transport corridor <u>Protect and enhance the biodiversity values and passive recreation, customary and conservation opportunities within the Silverstream Spur Natural Open Space (Pt Sec 1 SO 34755, Parcel ID: 3875189) at an appropriate scale, design, and location to</u></p> <ol style="list-style-type: none"> 1. Provide for a range of passive recreation opportunities; and <u>Allow optimum ecological functioning;</u> 2. Support for the development of the Southern Growth Area. Enable appropriate activities to support achieving those values and opportunities. 	

415. Submission S82.3 – The Guildford Timber Company supported in part NOSZ-P6 and requested it be amended to reflect the infrastructure would have wider functions and benefits that should be reflected in the policy as follows (or similar):

NOSZ-P6	Silverstream Spur Infrastructure
<p>Enable infrastructure including a transport corridor within the Silverstream Spur (Pt Sec 1 SO 34755, Parcel ID: 3875189) at an appropriate scale, design, and location to:</p> <ol style="list-style-type: none"> 1. Provide for a range of passive recreation opportunities; and 2. Support for the development of the Southern Growth Area, including the <u>construction and operation of new community water infrastructure;</u> 3. service residential development within the Spur; 4. facilitate the revegetation of retired plantation forestry with appropriate native species. 	

416. Submission S82.3 was opposed by thirteen further submissions who opposed provisions intended to enable infrastructure including a transport corridor on the site.
417. Multiple other submissions²⁰⁸ opposed NOSZ-P6 on the basis it proposes to enable a transport corridor and associated network utility infrastructure on the site to provide access to the Southern Growth Area.

²⁰⁸ Including: S41 – Bob McLellan; S42 – Pat van Berkel; S48 – Donald Skerman; S71 – Mary Beth Taylor; S77 – Tony Chad; and S81 – Ros Connelly.

S42A Report Author Recommendation

418. A number of amendments to NOSZ-P6 were recommended within the s42A report to address the matters raised in submissions. We summarise the key recommended amendments as:

- (a) The removal of the specific references to the ‘Southern Growth Area’, and its replacement with ‘future development opportunities’.
- (b) Supporting enhancement of biodiversity values.

419. The s42A authors Ms Thomson and Ms Rushmere did not consider it appropriate to remove reference to ‘appropriate scale, design, and location’ in relation to enabling transport corridor. An amendment to add reference to ‘facilitate the revegetation of the retired plantation forestry with the appropriate native species’ was referred to²⁰⁹, and we see this in the form of an amendment to clause 2 adding ‘restore and enhance the biodiversity of the Silverstream Spur’.

420. No further amendments were recommended to NOSZ-P6 in the right of reply.

Submitter Evidence and Information

421. Mr Hall presented planning evidence on behalf of submission S82 - Guildford Timber Company Ltd setting out his reasoning for opposing the recommendation in the s42A report to remove reference to the Southern Growth Area within NOSZ-P6²¹⁰. Mr Hall considered that it is important from a planning perspective that the intent of the variation to provide access to the Southern Growth Area, is recognised at Policy level. Mr Hall contended that submission S82 – Guildford Timber Company requested clarity around what infrastructure is enabled and could be provided for to support the Southern Growth Area.

422. In his evidence, Mr Hall stated²¹¹:

I do not believe that there is justification to delete the reference to the SGA arising out of the Forest and Bird Submission. It is an overreaction to the submission.

423. Mr Hall’s evidence pointed to the Guildford Timber Company’s submission on the draft Wellington Future Development Strategy (FDS) and the Upper Hutt City Council’s Plan Change 50, and expressed his opinion that these go some way to address the concerns raised by Forest and Bird on the wording of NOSZ-P6²¹².

424. Mr Hall’s updated planning evidence prepared for the reconvened hearing on ecology matters confirmed that Mr Hall had not changed his position from his opinions expressed

²⁰⁹ At para. 263.

²¹⁰ *Statement of Evidence of Michael Hall on Behalf of Guildford Timber Company Ltd*, dated 17 November 2023. At paras 6.42 – 6.49:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-michael-hall-planning-gtc.pdf>

²¹¹ At para. 6.48.

²¹² At para. 6.49.

in his evidence in chief for the initial hearing²¹³.

425. The additional legal submissions presented by Ms Tancock on behalf of submission S82 - Guildford Timber Company for the reconvened hearing on ecology matters raised the concern that the additional wording recommended by the s42A report cross-referencing to Policy NOSZ-P6 may have implications on any infrastructure required to support development of the Southern Growth Area – depending on the final extent of the SNA on the site²¹⁴.
426. Ms Tancock outlined two scenarios for the application of policy NOSZ-P6 as recommended in the s42A report with respect to proposed infrastructure on the site²¹⁵. Ms Tancock noted that because of the recommended addition to NOSZ-P6 to include a cross-reference to policy NOSZ-P7, the outcomes for infrastructure on the site would differ depending upon whether the infrastructure was proposed to be located within or outside the final SNA boundaries. Ms Tancock contended that due to Policy NOSZ-P7 including an effects management hierarchy for the management of effects on the proposed SNA, it is questionable whether the infrastructure could be placed on the site if it was proposed to be located within the SNA.
427. Ms Tancock put forward the view that such an outcome would be contrary to the enabling intent of Policy NOSZ-P6, and that there are “*no rules that provide for the development of infrastructure on the Silverstream Spur outside of the SNA*”²¹⁶, and that this would be contrary to the stated purpose of the variation²¹⁷.
428. In the ecology evidence prepared on behalf of submission S74 - Forest & Bird, Dr Maseyk put forward the position that policy NOSZ-P6 would compromise the very values within the Spur that qualify it as Natural Open Space Zone, and that this would be contrary to the directions of the NPS-IB in relation to managing adverse effects on an SNA²¹⁸.
429. Mr Williams’ legal submissions on behalf of submission S74 – Forest & Bird reiterated the request in submission S74 to amend policy NOSZ-P6 so that it does not refer to the Southern Growth Area or ‘future development opportunities’, and to ensure that any transport corridor is at an appropriate scale, design, and location to provide for passive

²¹³ *Statement of Rebuttal Evidence of Michael William Hall on behalf of Guildford Timber Company*, dated March 2024. At para. 5.4: https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/hall-michael-planning-rebuttal-evidence-plan-change-49-final-15.03.24-final_.pdf

²¹⁴ Additional Legal Submissions on Behalf of Guildford Timber Company Ltd, dated 22 March 2024. At para. 4.26: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

²¹⁵ At para 4.27.

²¹⁶ At para 4.27.

²¹⁷ At para. 4.31.

²¹⁸ Statement of Evidence of Dr Fleur Jennifer Foster Maseyk on Behalf of the Royal Forest and Bird Protection Society Inc. (Ecology), dated 17 November 2023. At para. 6.4: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-dr-fleur-maseyk-ecology-royal-forest-bird-protection-society-inc.pdf>

recreational opportunities²¹⁹.

430. We did not receive an updated statement of evidence from Dr Maseyk in advance of the reconvened hearing on ecology matters, but Mr Williams provided updated legal submissions on behalf of submission S74 which contended that departing from the balance of the NOSZ objectives and policies by including NOSZ-P6 (and rule NOSZ-R15) would need to be justified by clear planning evidence in support of the SGA, and that such planning evidence does not currently exist²²⁰.
431. Many submitters took the opportunity to present to the Panel during the hearing to express their views in opposition to specific provisions for a road and associated network utility infrastructure as part of the variation.

Discussion and Recommendation

432. As an overarching position, the Panel considers that policies included within the variation cannot be considered in isolation from the other policies proposed to be included for the Natural Open Space Zone via PC49. It should be noted that as part of our overall evaluation of PC49 and Variation provisions we have taken an integrated approach to the consideration of all proposed policies for the Natural Open Space Zone. We have also considered the operative policy direction within Transportation and Parking chapter and the Network Utilities chapter which set the policy direction for roads and network utility infrastructure within all zones. We return to this later in our discussion below.
433. We agree with Ms Tancock that policy NOSZ-P6, as recommended in the s42A report, would result in a different policy direction applying to infrastructure depending upon whether it is proposed to be located within or outside of the SNA. We note Ms Rushmere has addressed this via recommended amendments to apply to policy to the entire site, regardless of whether the infrastructure would be located within or outside of the SNA. We agree with Ms Rushmere that, in principle, this would be an appropriate amendment.
434. With respect to whether the policy should include reference to the Southern Growth Area, we note the confirmation from Ms Rushmere in the right of reply that the Southern Growth Area is not a site identified in the recently approved Wellington Future Development Strategy as a priority site²²¹. We also note Ms Rushmere's confirmation in her right of reply that the Council has an excess of realisable housing capacity enabled via the Council's Intensification Planning Instrument for the period from 2021-2051, and that this includes intensification via increased densities, and greenfield sites – which the Southern Growth

²¹⁹ *Legal Submissions on Behalf of the Royal Forest and Bird Protection Society Inc.* Dated 27 November, 2023. At Para 48: https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/fb_legal-submissions-amended.pdf

²²⁰ *Legal Submissions on Behalf of the Royal Forest and Bird Protection Society Inc.* Dated 22 March 2024. At para. 37: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/7.-forest-bird-legal-subs.pdf>

²²¹ At para. 119 of the right of reply.

Area is not included²²². We take from this that under the NPS-UD the Southern Growth Area is not currently a site needed by the Council for housing supply up until 2051.

435. We acknowledge that this situation did not exist at the time of the preparation and notification of the variation, and that the landscape has since rather rapidly changed following the Council's IPI being made operative in December 2023, and the adoption of the FDS in March 2024. We consider that the justification for including specific policy direction for the development of a greenfield site by providing access through a Natural Open Space zoned site should be, at least, supported by an up-to-date growth strategy or Future Development Strategy that identifies the greenfield site as necessary for the Council's 30-year urban growth demand. We therefore agree with Ms Rushmere and submission S74 – Forest and Bird that it is appropriate to delete the reference to the Southern Growth Area from policy NOSZ-P6.
436. Turning to the reference to 'infrastructure including a transport corridor', we agree with submission S82 – Guildford Timber Company, that it is unclear what infrastructure is intended to be enabled, other than a 'transport corridor'. However, our solution to this lack of clarity would, in principle, be to simply refer to 'network utility infrastructure'. As a defined term, this would capture all network utility infrastructure, including a road, water tanks etc. We note the term 'transport corridor' is not defined by the District Plan or by Variation 1 provisions, leaving its interpretation open for debate. However, we have been unable to find scope within submissions to recommend this change.
437. We agree with submission S74 that it would be appropriate to delete reference to the Southern Growth Area from the policy. It is not necessary to specify the purpose of infrastructure that is to be considered under the policy. We consider that reference in the policy to 'an appropriate scale, design, and location', would provide sufficient direction to decision makers to turn their mind to the appropriateness of any particular infrastructure proposal.
438. Regarding the cross-reference within Policy NOSZ-P6 to the effects management hierarchy set out in policy NOSZ-P7, although we agree with Ms Tancock that the cross-reference to policy NOSZ-P7 would result in different outcomes depending on whether infrastructure is located within or outside of the SNA, we find this to be a logical outcome due to the difference in effects on significant indigenous biodiversity that may arise from development within an SNA versus outside of an SNA. Notwithstanding this, we agree with Ms Tancock that reference to NOSZ-P7 should be deleted, albeit for a different reason. We consider that the effects management hierarchy under Policy NOSZ-P7 should stand on its own to be considered for all development proposals within the SNA rather than only development of a transport corridor and associated network utility infrastructure.
439. This brings us to the matter of policies within the proposed NOSZ and Variation 1 potentially

²²² At para. 118 of the right of reply.

being in conflict with each other as signalled by submission S74 – Foret & Bird. We agree with submission S74 – Forest and Bird that the balance of the Natural Open Space Zone objectives and policies should not be departed from in the absence of clear planning evidence. Forest and Bird request an amendment to shift the ‘enable’ direction to ‘only consider enabling’ to address the submitter’s concerns regarding how the policy direction fits with the Natural Opens Space zone purpose and the balance of the other Natural Open Space zone policies. We agree that reference to ‘enable’ presents a potential policy conflict with the balance of policies proposed for the zone. We note that of particular relevance are proposed Natural Open Space Zone policies setting out how appropriate development and inappropriate development will be considered as follows:

NOSZ-P2

Appropriate Development

Provide for built development including:

1. *Buildings & structures;*
2. *Walking and cycling tracks;*
3. *Bridleways;*
4. *Parking areas; and*
5. *Park and facilities management.*

designed, located and at a scale, to support informal sports and recreation activities, conservation, and customary activities that do not adversely affect the natural character, indigenous biodiversity, and amenity values of the Natural Open Space Zone.

NOSZ-P3

Inappropriate activities and development

Avoid activities or developments which are incompatible with the natural character, indigenous biodiversity, and amenity values of the Natural Open Space Zone, including avoiding:

1. *Motorised recreation outside of specified areas in NOSZ-R11;*
2. *Activities or development that are not recreational, conservation or customary activities and would inhibit these activities; and*
3. *Large scale development and activities that result in a loss of natural character or indigenous biodiversity values, within the zone.*

440. We consider that, at best, the enabling approach proposed by NOSZ-P6 would result in introducing uncertainty for decision makers when considering all relevant policies as part of the resource consent process – particularly when attempting to rationalise the avoidance direction of policy NOSZ-P3 with the enablement direction of policy NOSZ-P6. Regardless of the intention of the enablement direction of policy NOSZ-P6, we consider

that, notwithstanding its specificity in referring to a ‘road corridor’, this would not overcome the consideration of the matters to be avoided under policy NOSZ-P3 for inappropriate development within the Natural Open Space Zone. Our understanding on the most likely route and associated earthworks that would be necessary for a road through the site was guided by the infrastructure evidence of Mr Reid provided on behalf of submission S82 – Guildford Timber Company. Although we do not predetermine any potential future resource consent application, the Panel considers that based on Mr Reid’s evidence, it is difficult to envisage an outcome where a road through the spur would not run into consenting difficulties when proposed policy NOSZ-P3 was applied. This is our observation having been pointed to this via submissions but not having received any specific planning evidence that applied a wider implementation lens to the NOSZ policies in this way.

441. To address these undesirable potential implementation challenges, we carefully considered the amendments to NOSZ-P6 requested by submission S74 – Forest & Bird to make it clear that infrastructure under NOSZ-P6 is to be considered as an anticipated form of development on the site, but that proposed infrastructure would also be subject to consideration under all relevant policies of the zone on a case-by-case basis. We do not consider that amending the policy to start with ‘consider enabling’ as requested by submission S74 would provide sufficient direction and certainty to decision makers when assessing a development proposal against all relevant policies that may apply. It is unclear to us how a decision maker would ‘consider enabling’ infrastructure, and how this would be applied against other relevant policies. We are mindful that there is very limited scope available within submissions to recommend alternative amendments that we consider would make the policy workable. Therefore, on balance, we recommend NOSZ-P6 be deleted as shown in **Appendix 4**.

442. We recommend the relevant submissions and further submissions be accepted, accepted in part or rejected for the reasons set out above and in **Appendix 2**.

Section 32AA Evaluation

443. Please see **Appendix 6** for the mandatory RMA section 32AA evaluation for our recommended deletion of NOSZ-P6.

NOSZ-P7

Background

444. NOSZ-P7 proposes a direction to protect identified areas of significant indigenous vegetation from the adverse effects from development. This is followed by an effects management hierarchy setting out the requirements that the effects from development should be avoided where practicable.

445. NOSZ-P7 as notified was as follows:

NOSZ-P7	Silverstream Spur Natural Area
<p><u>Adverse effects from development on the identified Silverstream Spur Significant Natural Areas shall be:</u></p> <ul style="list-style-type: none"> (a) <u>avoided where practicable; and</u> (b) <u>where adverse effects cannot be demonstrably avoided, they are mitigated where practicable; and</u> (c) <u>where adverse effects cannot be demonstrably mitigated, they are remedied where practicable; and</u> (d) <u>where more than minor residual adverse effects cannot be demonstrably avoided, minimised, or remedied, biodiversity offsetting is provided where possible; and</u> (e) <u>if biodiversity offsetting is not appropriate, the development itself is avoided.</u> 	

Submissions

446. Submission S19.3 – Greater Wellington Regional Council requested policy NOSZ-P7 be amended to be consistent with the ‘avoid, minimise, remedy’ direction as set out in the National Policy Statement for Indigenous Biodiversity 2022 exposure draft, the National Policy Statement for Freshwater 2020, and as proposed by Policy 32 of Proposed Natural Resources Plan Change 1.
447. Submission S19.3 was supported in part by further submission FS16 – Forest & Bird provided that the requested amendments do not contravene the requested amendments requested in the Forest & Bird submission. Many further submissions²²³ were received in support of S19.3’s request to amend policy NOSZ-P7 to direct avoidance of adverse effects on the biodiversity values within the SNA.
448. Submission S74.3 – Forest & Bird considered that the effects management hierarchy within policy NOSZ-P7 does not protect biodiversity values as it allows for effects on SNAs from any activity as long as the hierarchy is worked through. As such, the submission considered that the policy is not based on the effects of the activity, and that the only way to protect the biodiversity values of the SNA is to amend the policy to avoid adverse effects. Further, the submission noted that the effects management approach potentially pre-empts future provisions for SNAs by only requiring adverse effects on SNAs to be avoided where practicable. The submission sets out specific requested amendments to NOSZ-P7 that generally follow the format of the NPS-IB exposure draft and proposed NRP Change 1 to specify the effects and outcomes that must be first avoided, before applying the effects management hierarchy²²⁴.

²²³ See Appendix 2.

²²⁴ Submission on Variation 1 of Forest & Bird. At para 22.

449. Submission S74.3 was supported by a number of further submissions on the basis that further submitters agree with the reasons provided for the requested amendments²²⁵.
450. Submission S74.3 was opposed by further submission FS12 – Guildford Timber Company on the basis that the further submitter considered that the ecological values of the Spur had not been accurately or accurately identified, and the requested changes to NOSZ-P7 would artificially and disproportionately inflate the importance of ecological values on the site. The future submitter pointed to its position that a reasonable and navigable consenting pathway needs to be assured for a proposed transport corridor on the Spur.
451. Submission S79.3 – Upper Hutt Branch of Forest & Bird shared the concerns and the requested amendments to NOSZ-P7 put forward by submission S74 – Forest & Bird.
452. Submission S82.4 – Guildford Timber Company requested that policy NOSZ-P7 be deleted because the submitter considered that:
- (a) the policy would be more appropriately introduced by way of comprehensive plan change relating to significant natural areas across the city;
 - (b) the Council’s evidence base does not support the identification of the SNA, and the SNA has not been accurately mapped in the variation; and
 - (c) the policy does not clarify how it is intended to be applied in conjunction with the policy direction in the Ecosystems and Indigenous Biodiversity chapter in the operative District Plan.
453. Submission S82.4 was opposed by further submission FS16 – Forest & Bird, as the further submitter considered that the request to delete policy NOSZ-P7 fails to consider the Council’s obligations under section 6(c) of the RMA and its requirements to give effect to the NPS-IB.
454. A number of other further submissions oppose submission S82.4’s request to delete policy NOSZ-P7 on the basis that, in general, the further submitters do not consider the reasons provided by the submitter to be valid.

S42A Report Author Recommendation

455. The updated s42A report prepared by Ms Rushmere for the reconvened hearing on ecology matters did not make any change to the initial recommendation of Ms Thomson to retain policy NOSZ-P7 on the basis that the effects management hierarchy is considered appropriate to maintain the biodiversity values within the identified Silverstream Spur Natural Area. Amendments were recommended in the original s42A report to include reference to ‘protection’ in addition to management.
456. With respect to the request by submission S19.3 to amend the policy to reflect the wording

²²⁵ Further submitters in support include but are not limited to: FS8 – Helen Chapman; FS10 – Save Our Hills; FS19 – Silver Stream Railway Inc; FS23 – Tony Chad; FS24 – Mary Beth Taylor.

proposed by the proposed change to the Natural Resources Plan, the s42A report considered the requested approach to be less protective than the policy direction proposed by NOSZ-P7.

Submitter Evidence and Information

457. The ecology evidence submitted by Dr Maseyk on behalf of submission S74 – Forest & Bird noted that the NPS-IB requires that the adverse effects on an SNA need to be avoided, including the loss of ecosystem representation and extent, disruption to ecosystem function, and fragmentation. Dr Maseyk made the observation that policy NOSZ-P7 requires the application of an effects management hierarchy, including avoiding adverse effects on the SNA ('where practicable'), but that this is not an avoidance policy in of itself²²⁶.
458. Dr Maseyk contended that the development of a road within the Spur would result in a number of adverse effects on the SNA and surrounding ecological values including the fragmentation of habitat (and consequential disruption to ecological connectivity), increased edge effects, changes in microclimate and hydrological regimes, adverse effects on fauna due to lighting, noise, and vibration associated with the road, and potential for collisions of wildlife with vehicles. Our understanding of Dr Maseyk's evidence is that she considers policy NOSZ-P7 does not give effect to the requirements of the NPS-IB, and that it should be amended as set out in the original submission by Forest & Bird²²⁷.
459. The planning evidence submitted by Mr Hall on behalf of submission S82 – Guildford Timber Company for the initial hearing supported the inclusion of policy NOSZ-P7 on the proviso that the mapped areas of the SNA on the site were amended to be consistent with those included in the ecology evidence of Dr Keesing. Mr Hall noted this would limit the extent of the SNA to two small areas on the Spur.²²⁸ Mr Hall did not update his position in his updated planning evidence on this matter submitted for the reconvened hearing on ecology matters.
460. The legal submissions prepared by Ms Tancock on behalf of submission S82 – Guildford Timber Company for the reconvened hearing on ecology matters pointed to an inconsistency in the terminology used in NOSZ-P7 to describe the SNA²²⁹, and noted that the consistent use of terminology is critical. Ms Tancock pointed to the cross-reference in policy NOSZ-P6 to policy NOSZ-P7, and noted that as a result, any infrastructure required to support development of the Southern Growth Area will depend on the final extent of the

²²⁶ At para. 6.5: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-dr-fleur-maseyk-ecology-royal-forest-bird-protection-society-inc.pdf>

²²⁷ Statement of Evidence of Dr Fleur Maseyk on Behalf of Forest & Bird, dated 174 November 2023. At paras 7.1 – 7.2: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-dr-fleur-maseyk-ecology-royal-forest-bird-protection-society-inc.pdf>

²²⁸ At para. 6.50: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-michael-hall-planning-gtc.pdf>

²²⁹ At para. 4.24: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

SNA²³⁰. Ms Tancock concluded that, if the extent of the SNA was not amended to be consistent with that put forward by Dr Keesing in his evidence, it would be questionable as to whether infrastructure could be placed on the Silverstream Spur, and that this potential outcome would be contrary to the enabling intent of policy NOSZ-P6²³¹.

Discussion and Recommendation

461. In the Panel's view, the direction of policy NOSZ-P7 is dependent upon whether there is a requirement that Variation 1 provisions give effect to the NPS-IB. As the NPS-IB came into effect in August 2023, the Panel considers that it could not have played a role in the Council's thinking when preparing the variation for public notification. As a result, the NPS-IB was a matter only referred to in a small number of submissions, as only a draft NPS-IB was in existence at the time of public notification and during the submission and further submission periods.

462. We were assisted in determining to what extent variation 1 provisions must give effect to the NPS-IB by legal submissions and additional legal information provided to the Panel as follows:

- (a) In the legal submissions prepared by Ms Tancock on behalf of submission S82 – Guildford Timber Company, Ms Tancock confirmed the relevant case law²³², and agreed with the legal advice²³³ provided to the Council by Buddle Findlay advising that Clause 3.8(5) of the NPS-IB applies to the variation. Ms Tancock considered that this requires that an area of significant indigenous vegetation identified as part of the variation needs to be treated as a Significant Natural Area in the context of the NPS-IB²³⁴. Ms Tancock concluded that:

GTC accepts that the correct legal position is that where evidence of an SNA is available to the Council (and the Panel) there is an obligation to identify that in accordance with the NPS-IB SNA criteria²³⁵.

- (b) In the legal submissions prepared by Mr Williams on behalf of submission S74 – Forest & Bird for the reconvened hearing on ecology matters, Mr Williams stated:

²³⁰ At para. 4.26.

²³¹ At para. 4.27.

²³² *Balmoral Developments (Outram) Ltd v Dunedin City Council* [2023] NZEnvC; and the High Court Decision in *Southern Cross Healthcare Ltd v Auckland Council* [2023] NZHC 948.

²³³ Albeit for different reasons.

²³⁴ At para. 2.2: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

²³⁵ At para 2.3.

The Panel is asked to note that cl.3.16 of the NPS-IB also requires adverse effects on indigenous biodiversity outside SNAs to be managed by applying the effects management hierarchy²³⁶.

- (c) The legal advice on legal queries provided by Buddle Findlay for the Council that was attached to the right of reply prepared by Ms Rushmere²³⁷ sets out the Council's position that:
- (i) The proposed area of significant indigenous vegetation within Variation 1 is an SNA for the purposes of the NPS-IB because it is an area of significant indigenous vegetation which, on the commencement date of the NPS-IB was already identified in a plan, which includes Variation 1²³⁸;
 - (ii) Because the area is an SNA for the purposes of the NPS-IB, the Council is required, within four years after the commencement date of the NPS-IB to engage a suitably qualified ecologist to confirm that the methodology originally used to identify the area as an SNA, and its application, is consistent with the assessment approach in Appendix 1 of the NPS-IB.
 - (iii) Accordingly, the Council should be satisfied that this requirement is met (we presume by the assessment of the SNA carried out by Mr Goldwater), or that it will be met by 4 August 2027²³⁹.

463. We therefore conclude that, all legal submissions and legal advice provided to the Panel are in agreement that the SNA must be treated as an SNA under the NPS-IB.

464. The Panel therefore agrees with submission S74 – Forest & Bird that amendments are necessary to NOSZ-P7 to ensure the policy direction gives effect to the requirements of the NPS-IB with respect to the application of the effects management hierarchy. Although we note Ms Rushmere's opinion that recommended amendments to rules NOSZ-P7 and NOSZ-R22 would ensure adequate protection for the SNA until such time the Council initiates a plan change to give full effect to the NPS-IB, we consider this would not fully address the requirements to avoid the specific effects on indigenous biodiversity as specified by clause 3.10, subclauses (2) and (3) of the NPS-IB.

465. We agree with submission S74 – Forest & Bird that the current wording of NOSZ-P7 puts in place a policy framework that would enable adverse effects on the SNA to only be avoided

²³⁶ At para. 21: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/7.-forest-bird-legal-subs.pdf>

²³⁷ Legal advice provided by Buddle Findlay, dated 27 February, 2024:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/appendix-3-%E2%80%93-legal-advice-received-on-matters-raised-at-the-hearing.pdf>

²³⁸ At para. 12.

²³⁹ As per para. 13 of the Buddle Findlay legal advice, Clause 3.8(5) of the NPS-IB requires this ecological assessment or confirmation from an ecologist be provided within 4 years after the commencement date of the NPS-IB.

if practicable. We agree with submission S74 that this outcome would not provide the overarching avoidance direction for the specific adverse effects on the SNA, which we observed are listed within Clause 3.10(2) of the NPS-IB.

466. We agree with submission S74 - Forest & Bird that amendments to NOSZ-P7 are necessary to ensure the policy direction for the avoidance of specific effects on indigenous biodiversity within the SNA are avoided, while other effects are to be managed via the effects management hierarchy.
467. Accordingly we recommend policy NOSZ-P7 is amended in a similar manner as that requested by submission S74.3. We have recommended amendments that achieve the primary avoidance direction of the NPS-IB, followed by the application of the effects management hierarchy for other effects as set out in the NPS-IB. Our recommended amendments include wording to clarify that the avoidance policy direction is subject to the exceptions specified in clause 3.11 of the NPS-IB. We consider these amendments generally fall within the changes requested by submissions S74 – Forest & Bird, and S19.3 – Greater Wellington Regional Council. For the avoidance of doubt, our recommended amendments to NOSZ-P7 to include reference to the exceptions listed in clause 3.11 of the NPS-IB are made to give effect to clause 3.10(3) of the NPS-IB.
468. In forming our view on the most appropriate wording of policy NOSZ-P7 to give effect to the NPS-IB, we have carefully considered the oral legal submissions provided by Ms Tancock on behalf of submission S82 – Guildford Timber Company with respect to guidance from the Courts on the application of ‘avoid’ and ‘protect’ policy direction during the consideration of a resource consent application²⁴⁰.
469. We note Ms Tancock’s advice²⁴¹ that the Courts interpretation of policy direction to ‘avoid’ and ‘protect’ are not absolute, and that material harm can be mitigated to ‘immaterial harm’ via the imposition of conditions at a consent stage, and taking into account the temporary nature of which the harm subsists, meaning overall the harm it is not material. We agree with Ms Tancock that this underscores the importance of allowing applications to proceed to consent state before reaching conclusions about effects.
470. With this in mind, the Panel considers that our recommended amendments to the NOSZ-P7 do not preclude or predetermine the outcome of a future resource consent application for infrastructure, including a road corridor, within the SNA on the site. We acknowledge the consent path will be more challenging than the notified controlled activity status of rule NOSZ-R15 and the approach set out under NOSZ-P7 as notified, however we consider our recommended amendments to be more appropriate in achieving the relevant objectives.

²⁴⁰ At paras. 2.16 – 2.18: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/gtc-oral-legal-submissions-for-reconvened-hearing.pdf>

²⁴¹ *Additional Oral Legal Submissions on Behalf of Guildford Timber Company*, dated 2 April 2024. At 2.17: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/gtc-oral-legal-submissions-for-reconvened-hearing.pdf>

We also consider our recommended amendments to be more appropriate with respect to the management of the actual and potential adverse effects on significant indigenous vegetation and significant habitats of indigenous fauna that may arise from development within the SNA.

471. As a final comment on the concerns raised by Ms Tancock regarding the importance of ensuring a viable consent path remains for a road through the site to land owned by the Guildford Timber Company, we point to our discussion above with respect to proposed controlled activity rule NOSZ-R15 (below) and policy NOSZ-P6 (above). At first glance, the proposed rule and standard appears to provide a high level of certainty to an applicant proposing to construct a road and associated network utility infrastructure on the Council-owned site. However, In our analysis for rule NOSZ-R15 and policy NOSZ-P7 we conclude that controlled activity status for a road and associated network utility infrastructure on the site would not have been technically possible due to the existence of higher-level operative rules in the Transport and Parking chapter and the Network Utility chapter of the District Plan which already managed these forms of development. In a similar vein, our discussion on the enabling wording proposed by NOSZ-P6 as notified outlines our concerns with the direction of that policy and how it would be rationalised alongside other more directive policies proposed for the Natural Open Space Zone via PC49.
472. We recommend that proposed policy NOSZ-P7 be amended as shown in **Appendix 4**, and that the relevant submissions and further submissions be accepted, accepted in part, or rejected for the reasons as set out above and in **Appendix 2**.

Section 32AA Evaluation

473. Please see **Appendix 6** for the mandatory RMA section 32AA evaluation for our recommended amendments to policy NOSZ-P7.

NOSZ-R15 and NOSZ-S4

Background

474. As notified, rule NOSZ-R15.1 proposed to provide for ‘road and associated network utility infrastructure, including storage tanks or reservoirs on the Silverstream Spur Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189)’ as a controlled activity, subject to compliance with proposed new standards set out in NOSZ-S4 as follows:

1. *Carriageway traffic lanes width shall not exceed 3.5m per lane.*
2. *Footpath or shared path shall be provided on one side of the road only.*
3. *Road and footpath gradient shall not exceed 1:8.*
4. *Parallel parking may be provided along one side of the road.*

5. *Transport corridor and earthworks are not located within the Silverstream Spur Natural Area.*

475. Where compliance is not achieved with the controlled activity standards set out in NOSZ-S4, road and associated network utility infrastructure would be a discretionary activity under proposed rule NOSZ-R15.2.
476. Proposed rule NOSZ-R15 provides for road and associated network utility infrastructure if located within the 'Silverstream Spur Natural Area'. As notified, Variation 1 did not include a definition for the 'Silverstream Spur Natural Area' or a notation identifying the area on the proposed rezoning map.
477. Variation 1 does not include any site-specific rules for road and network utility infrastructure if located outside of the 'Silverstream Spur Natural Area'. The effect of this is that roads and associated network utility infrastructure located outside of the 'Silverstream Spur Natural Area' would not be managed by the variation provisions, and would therefore continue to be managed via provisions within other chapters of the operative District Plan.

Submissions

478. Submission S82 - Guildford Timber Company Ltd supported in principle the controlled activity status for NOSZ-R15 to implement proposed policy NOSZ-P6 but requested a number of specific amendments be made to improve clarity and efficacy. The requested amendments²⁴² requested to NOSZ-R15 set out in the submission included:
- (a) The addition of earthworks and vegetation clearance as activities managed under the rule.
 - (b) The deletion of reference to 'Natural Area' so the rule would apply to the entire Silverstream Spur site.
 - (c) The removal of reference to storage tanks and reservoirs.
 - (d) The deletion of the requirement to comply with the standards set out in NOSZ-S4.
 - (e) Amend matters of control for landscaping, road alignment location and design, and earthworks and accidental discovery.
 - (f) Delete matters of control for special amenity features, financial contributions, and effects on biodiversity on the identified Significant Silverstream Spur Natural Area.
 - (g) Consequently amend the Network Utility, Earthworks, Transport & Parking, Ecosystems & Indigenous Biodiversity Chapters to exclude activities subject to proposed Rule NOSZ-R15 from corresponding provisions in those chapters.
479. Submission S82 also requested that the entire variation be comprehensively redrafted to

²⁴² See page 7 of GTC submission for full details of requested amendments to NOSZ-R15 and consequential amendments.

address a number of matters. Some of these matters are relevant to NOSZ-R15 and NOSZ-S4 including:

- (a) 'the provisions duplicate, or conflict with, other chapters in the operative District Plan – for example in the earthworks chapter, the ecosystems and biodiversity chapter, and the transport and parking chapter';
- (b) The proposed standards under NOSZ-S4 that relate to road design matters are neither necessary nor justified.
- (c) NOSZ-R15 refer to a single 'Silverstream Spur Natural Area' without using the term 'identified', while NOSZ-S4 does not reference the legal description to the site referred to in NOSZ-R15. The consequence of this is that it is unclear whether the entire Silverstream Spur site is identified as the 'Silverstream Spur Natural Area'.
- (d) There is no plan, figure or wording included in the variation provisions that identifies any area as a 'significant natural area' in the context of the Spur, although the submission acknowledged that the section 32 evaluation states that the proposed zoning map includes the identification of the extent of the area on the Silverstream Spur identified as a Significant Natural Area.
- (e) Exclusionary clauses be added to NOSZ-R15 or that consequential amendments be made to the Network Utility, Earthworks, Transport and Parking, Ecosystems and Indigenous Biodiversity chapters to exclude activities subject to proposed rule NOSZ-R15 from corresponding provisions in those chapters. The submission also noted that NOSZ-R15 in particular was not efficient or effective for the purposes of implementing the operative objectives and policies of the District Plan, or the proposed policies in the variation²⁴³.

480. Submission S82 requested that either the variation be withdrawn or rejected, or that the variation be subjected to a comprehensive redrafting to address the submitter's concerns, and that any alternative or consequential amendments are made to give effect to the relief sought in the submission.

481. Amendments requested to NOSZ-R15 by submission S82 were opposed by many further submissions²⁴⁴ on the basis the further submitters opposed provisions enabling a road through the site and the SNA via a controlled activity resource consent pathway.

482. Submission S3 – Stuart Grant supported the specific provision for future access to the Southern Growth Area on the basis it will provide access to much needed residential development opportunities. The submission requests the variation be retained as notified.

²⁴³ Submission 82 - Guildford Timber Company Ltd, 'General submission', clause (c), pg. 3.

²⁴⁴ Further submissions opposing S82 with respect to NOSZ-R15 can be viewed in Appendix 2. Relevant further submissions include: FS4 – Pat Van Berkel; FS5 – Heather Blisset; FS6 – Christian Woods; FS7 – Carl Leenders; FS10 – Save Our Hills (Upper Hutt) Inc.; FS11 – Susan Pattinson; FS17 – Forest & Bird; FS19 – Silver Stream Railway Inc.; FS22 – Martin McGlue; FS23 – Tony Chad; FS24 – Mary Beth Taylor.

483. Submission S74 – Forest & Bird noted that as a controlled activity, a consent under NOSZ-S15 must be granted. The submission raised concerns that this could mean that the controlled activity status could indicate the appropriateness of the activities enabled by NOSZ-R15 effectively making the discretionary status for vegetation removal in the SNA to provide for the road connection a token gesture with a presumption that consent will be granted²⁴⁵. The submission noted that NOSZ-R15 only provides restrictions on a transport corridor, not on any associated network utility infrastructure²⁴⁶. The submission pointed out that in the alternative, it could mean that upon bundling consents the overall activity status would be discretionary, in which case the proposed controlled activity status has little relevance. The submission considered that the meaning of a controlled activity in this context is confusing, and therefore NOSZ-R15 and the corresponding standard NOSZ-S4 should be deleted.
484. Submission S79 – Upper Hutt Branch of Forest & Bird added that it is inappropriate that a controlled activity status be applied for network utility infrastructure within any Natural Open Space Zone, and that at the very least, these should be a discretionary activity²⁴⁷.
485. Submissions S74 and 79 were supported by many further submissions²⁴⁸, including but not limited to FS19 – Silver Stream Railway Inc, FS23 – Tony Chand, and FS10 – Save Our Hills (Upper Hutt) Inc. Further submission FS12 – Guildford Timber Company supported in part submission 74 – Forest & Bird with respect to the submitter’s general critique of the variation.
486. Submission S91 – Save Our Hills opposed the site-specific provisions for infrastructure including a transport corridor on the basis the proposed transport corridor and infrastructure would be for the benefit of a private developer, and as such should not be paid for out of the public purse via the variation process. The submission stated that any access and infrastructure for the ‘Southern Growth Area’ should be by way of a private plan change. Submission S91 was supported by seven further submissions²⁴⁹.
487. The panel notes that numerous other submissions were made in opposition to a road through the Spur site without specifically referring to rule NOSZ-R15. Examples of such submissions include but are not limited to S5 – Lynda Joines, S6 – Stephen Butler, S7 – Helen Chapman, S8 – Craig Thorn, S86 – Silver Stream Railway Inc, and multiple other submissions²⁵⁰.

S42A Report Author Recommendation

488. The s42A report prepared by Ms Thomson in advance of the initial hearing recommended

²⁴⁵ At para 18(d).

²⁴⁶ Submission S74 – Forest and Bird Protection Society Inc, at para 28.

²⁴⁷ Submission S74, at para 28.

²⁴⁸ See Appendix 2 for all relevant further submissions.

²⁴⁹ See Appendix 2 for all relevant further submissions.

²⁵⁰ See Appendix 2 for all relevant submissions and further submissions.

that rule NOSZ-R15 be retained as a controlled activity, but amendments be made to the matters of control. In summary, the recommended amendments were to:

- (a) Add accidental discovery to the ‘earthworks’ matter of control;
- (b) Delete matter of control for the ‘protection of any special amenity feature’; and
- (c) Delete reference to ‘significant’ from the matter of control for effects on biodiversity in the identified ‘Significant Silverstream Spur Natural Area.’

489. In advance of the reconvened hearing to consider ecology matters, Ms Rushmere provided an updated s42A report²⁵¹, having taken over the role of s42A report author for Variation 1 due to Ms Thomson being unavailable to attend the reconvened hearing.

490. The updated s42A report prepared by Ms Rushmere provided an updated recommendation to amend rule NOSZ-R15 to a discretionary activity²⁵². Ms Rushmere reasoned that this would still provide a consenting pathway for the road and associated infrastructure.

491. In her right of reply, in response to questions from the Panel, Ms Rushmere carried out an evaluation of the existing provisions from across the operative District Plan, PC49, and Variation 1 to identify whether there were any existing operative provisions within the District Plan or other proposed provisions in PC49 that manage the same activities proposed to be managed by rule NOSZ-R15. Although Ms Rushmere did not identify any policy conflicts, a number of previously unidentified rule conflicts, duplication and potential applicability of operative and proposed rules were identified.

492. For clarity, the Panel notes that the Operative District Plan only includes a generic Open Space Zone, and that PC49 proposes to introduce the Natural Opens Space Zone (and other open space zones) and associated provisions into the District Plan. The provision duplication and potential additional applicability of rules identified in the right of reply can be summarised as follows:

- (a) The proposed discretionary activity catch-all rule NOSZ-R19 in the proposed Natural Open Space zone chapter (under PC49) may apply to a road on the site as follows:

Discretionary Activities		
NOSZ-R19	<u>Any activity not provided for as a permitted, restricted discretionary or non-complying</u>	DIS

- (b) A road within the Open Space zones is a non-complying activity under operative rule TP-R5 as follows:

²⁵¹ As directed by the Panel. See Panel Minute #9:
<https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/minute-9.pdf>

²⁵² At para 265 of the updated Variation 1 s42A report:
<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/updated-council-evidence-report-section-42a-report-for-variation-1-to-pc49.pdf>

Non-complying Activities			Zones
Roading, and Traffic and Transport Structures			
TP-R5	The construction, alteration or diversion of roads , but excluding any such construction works which are part of a subdivision	NC	<i>Open Space</i>

493. Ms Rushmere noted that in addition to proposed rule NOSZ-R15, operative non-complying rule TP-R5 would also apply to a road on the site under the proposed Natural Open Space zoning. Although rule TP-R5 (non-complying) was not included as part of PC49 or Variation 1, Ms Rushmere recommended a change to TP-R5 to exclude the Silverstream Spur site from the rule. Scope to make this amendment was cited as submission S82.1 – Guildford Timber Company, which requests consequential amendments to address the relief sought in the submission. The recommended amendments to TP-R5 in the right of reply were as follows:

Non-complying Activities			Zones
Roading, and Traffic and Transport Structures			
TP-R5	The construction, alteration or diversion of roads , but excluding any such construction works which are part of a subdivision and a road within the <u>Silverstream Spur: Part Section 1 SO 34755</u>	NC	<i>Open Space</i>

494. Ms Rushmere also recommended an additional consequential amendment to rule TP-R5 (Discretionary) to add ‘Silverstream Spur: Part Section 1 SO 34755’ as follows:

TP-R5 – Discretionary

The construction, alteration or diversion of roads, but excluding any such construction works which are part of a subdivision

Applies to the following zones / areas

General Residential

General Rural

Rural Production

Rural Lifestyle

Neighbourhood centre

Local centre

Mixed use

Town centre

City centre

General Industrial

Development Area 1 (Gateway Precinct only)

Development Area 2

Development Area 4

Silverstream Spur: Part Section 1 SO 34755

495. Water reservoirs are a restricted discretionary activity under operative rule NU-R25 within the Network Utilities chapter as follows:

Restricted Discretionary Activities			Zones
Water, Wastewater and Stormwater			
NU-R25	<p>Water reservoirs.</p> <p>Council will restrict its discretion to, and may impose conditions on:</p> <ol style="list-style-type: none"> 1. Risks to public health and safety 2. Design and external appearance 3. Any effect on heritage and cultural values 4. Visual effects including impacts on: <ol style="list-style-type: none"> a. The residential and recreational use of land in the vicinity of the proposed utility; b. The existing character, landscape, streetscape and amenity values of the locality; c. Key public places, public viewing points, and significant recreational areas 5. Amenity effects, including noise, vibration, dour, dust, earthworks and lighting 6. Cumulative effects 7. Any potential interference with public use and enjoyment of the land and the operation of land uses in the vicinity 8. Measures to mitigate the bulk and scale of the utility, including screening, colour and finish treatment, earth mounding and / or planting, viewing distances, the location of support structures 9. The extent to which alternative locations, routes or other options have been appropriately considered. 10. Rehabilitation of the site following any construction or future maintenance period. 11. The extent to which the affected persons / community has been consulted with. 	RDIS	<i>All</i>
<i>Policies</i>			
<i>NU-P5</i>			
<i>NU-P6</i>			
<i>NU-P9</i>			

	12. Earthworks and erosion and sediment control.		
	13. Any adverse effects on an identified heritage site or an area of native vegetation.		

496. Ms Rushmere suggested²⁵³ that operative rule NU-R25 would apply to water reservoirs on the Silverstream Spur site outside of the proposed SNA, and would afford a higher level of protection than rule NOSZ-R15 within the SNA.

497. All network utilities²⁵⁴ that are not otherwise listed as another activity status are a discretionary activity under operative rule NU-R27 as follows:

Discretionary Activities		Zones	
General			
NU-R27	All network utilities that are not otherwise listed as a permitted, controlled, restricted discretionary or non-complying activity	DIS	<i>All</i>

498. Ms Rushmere noted²⁵⁵ that operative rule NU-R27 means that network utilities would be a discretionary activity outside of the SNA, while within the SNA they would be a controlled activity under proposed rule NOSZ-R15.

499. Ms Rushmere recommended in the right of reply that these conflicts should be overcome by applying discretionary activity status to proposed rule NOSZ-R15, and that this would be appropriate because it would afford the SNA the same or a higher level of protection than outside of the SNA. The right of reply also recommended that, based on the additional rule analysis requested by the Panel, that consequential amendments be made to the Transport and Parking chapter to exclude the site from the operative non-complying activity rule TP-R5 for roads within Open Space zones.

Submitter Evidence and Statements

500. Mr Hall’s planning evidence for the initial hearing submitted on behalf of submission S82 – Guildford Timber Company did not alter the submitter’s support for controlled activity status for rule NOSZ-R15 , but maintained the submitter’s request to redraft the rule to ensure roading and associated network utility infrastructure are provided for. Mr Hall expressed support for amendments recommended in the s42A report prepared by Ms Thomson to the matters of control to include accidental discovery and to delete the protection of ‘special amenity feature’ . However, with regard to matter of control (h), Mr Hall confirmed that he considered the inclusion of reference to ‘Significant’ Silverstream

²⁵³ At paragraph 224 of the right of reply.

²⁵⁴ The Panel notes *network utilities* includes council-owned roads.

²⁵⁵ At paragraph 225 of the right of reply.

Spur Natural Area was only supported on the condition that the mapped extent of the SNA was amended to be in alignment with the requested SNA boundaries attached to Mr Halls evidence, which duplicated the SNA boundaries prepared by Dr Keesing in his ecology evidence submitted on behalf of the Guildford Timber Company.

501. The ecology evidence submitted by Dr Maseyk on behalf of submission S74 - Forest & Bird noted that 'effects on biodiversity in the identified Significant Natural Area' as a matter of control for the consenting of a road is only one component of ecological value, and that Dr Maseyk considered that it would be ecologically nonsensical and inappropriate from a policy perspective to restrict the consideration of adverse effects²⁵⁶.
502. We received many submitter statements and heard from multiple submitters as part of the hearing process. These submitters generally presented strong opposition to proposed rule NOSZ-R15 and standard NOSZ-S4. In summary, this opposition was on the basis that the submitters considered the provisions proposing to enable a road on the Spur site are inappropriate in light of the natural values of the site and its contribution toward biodiversity and community uses, including future community uses and activities as part of the public Natural Open Space zone network of Upper Hutt.

Discussion and Recommendation

503. We agree with submitter S74 – Forest & Bird that as a controlled activity rule, the Council would be required to grant resource consent if all the standards are met. We also agree with submitters S74 – Forest & Bird and S82 - Guildford Timber Company²⁵⁷, that despite the rule proposing to provide for 'road and associated network utility infrastructure' on the Silverstream Spur Natural Area (SNA), a road and associated network utility infrastructure would likely be unable to comply with the proposed standard under NOSZ-S4 that excludes a transport corridor and earthworks from being located within the SNA. This position was perhaps best visually demonstrated by the spatial extent of the SNA as included in the variation, and via the infrastructure evidence provided by Mr Reid for submission S82 – Guildford Timber Company²⁵⁸. Mr Reid's evidence demonstrated that the most practicable route for a road of acceptable gradient and width through the Spur would need to go through the notified extent of the SNA. We did not receive any other infrastructure evidence that disputed the most likely route for a road promulgated by Mr Reid, and we note the route as shown by Mr Reid's evidence is generally consistent with our understanding of the route for a road through the site that accompanied an unsuccessful bid by the Council for funding under the Infrastructure Accelerator Funding application in 2022 - as presented to us by

²⁵⁶ Statement of Evidence of Dr Fleur Maseyk on Behalf of the Royal Forest and Bird Protection Society Inc, dated 17 November 2023. At para 6.7.

²⁵⁷ See submission S82 and submission point S82.5.

²⁵⁸ *Statement of Evidence of Phillip Read, Infrastructure, Services, Roading & Hazards on Behalf of Guildford Timber Company*, dated 17 November 2023, at Paragraph 5.5:
<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-phillip-read-infrastructure-gtc.pdf>

Submitter S86 – Silver Stream Railway Inc during the reconvened hearing.

504. We agree with submitters and Ms Rushmere that ‘associated network utility infrastructure, including storage tanks or reservoirs’ could, in theory, be consented under rule NOSZ-R15 if located within the SNA, but a road could not be due to clause 5 of standard NOSZ-S4 preventing a transport corridor and earthworks from being located within the SNA. We therefore deduce that, as a specific rule for a road within the SNA was not included in the variation, it was the intention that this scenario would need to be consented via another operative rule(s) in the District Plan that was not within the scope of the variation. Perhaps unsurprisingly, it was our observation that this situation resulted in the location and extent of the proposed SNA being a key focus for submissions in favour of, and in opposition to Variation 1 provisions that specially provide for a road.
505. We do not revisit the location and extent of the SNA on the Spur site addressed above under the heading ‘Ecological Values and Spatial Extent of SNA’, we simply note its’ connection to many submitters’ consideration of NOSZ-R15 and NOSZ-S4, and to highlight the complexity and interconnectedness of the Variation 1 provisions and the matters raised in submissions.
506. A key question for the Panel throughout our consideration of the variation was to request the Council to identify the relevant existing objectives, policies and rules within the District Plan that already manage the same resource management issues and development types that are intended to be managed by rule NOSZ-R15. To assist in our understanding of how the variation provisions would be applied, we have also focused our inquiry on gaining an understanding of any material differences between the existing and proposed objective and policy direction that would be considered as part of a resource consent application for a road, reservoirs, earthworks, and network utility infrastructure within the relevant existing District Plan chapters compared to those that would apply under the variation and PC49 within the Natural Open Space zone.
507. Within the right of reply, Ms Rushmere helpfully provided us with tables setting out how roads and network utility infrastructure under proposed rule NOSZ-R15 are managed elsewhere via operative rules in the District Plan. Ms Rushmere set out this under the existing split-zoning of the site and under the proposed Natural Open Space zoning. This analysis identified relevant rules²⁵⁹, and the relevant objectives and policies²⁶⁰. With respect to the objectives and policies, we have also considered the changes to objectives and policies proposed by PC49 on the basis that Variation 1 provisions are intended to be inserted into the proposed Natural Open Space Zone provisions under PC49. We discuss this aspect in detail in our report above where we address proposed policies NOSZ-P6 and

²⁵⁹ Appendix 6 to the right of reply: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/appendix-6-comparison-of-rules-and-standards-for-silverstream-spur.pdf>

²⁶⁰ Appendix 9 to the right of reply: <https://www.upperhuttcity.com/files/assets/public/v/2/districtplan/pc49/reconvened-hearing/appendix-9-%E2%80%93-objectives-and-policies-relevant-to-variation-1.pdf>

NOSZ-P7.

508. As set out by Ms Rushmere in her right of reply and final recommended provisions, we note that roads and network utility infrastructure intended to be managed within and outside of the proposed SNA are already managed via the operative rules and standards within other chapters of the District Plan as follows:
- (a) Water reservoirs in all zones are a restricted discretionary activity under rule NU-R25 within the Network Utilities chapter.
 - (b) *Network utility structures*²⁶¹ in all zones are managed as either a restricted discretionary activity under rule NU-R20, or a discretionary activity under rule NU-R27 within the Network Utilities chapter.
 - (c) Roads on Open Space zoned sites are managed as a non-complying activity via rule TP-R5 (Non-Complying) within the Transport and Parking chapter.
 - (d) Roads on the Silverstream Spur site under the existing split-zoning of General Residential Zone and General Rural Zone are a discretionary activity under rule TP-R5 (Discretionary) within the Transport and Parking chapter.
509. The above demonstrated to us that the management of a road and associated network utility infrastructure within the SNA on the site via specific provisions in the variation either duplicate or conflict with the existing regulatory framework located in other chapters of the District Plan. We find that if the intent of NOSZ-R15 and NOSZ-S4 is to manage the effects of a road and associated network utility infrastructure on the proposed SNA by excluding a transport corridor and earthworks from being located within the SNA, then this would most appropriately be achieved via a rule that specifically manages the actual and potential environmental effects that may arise from the removal of indigenous vegetation from within the SNA – regardless of the type of development that would lead to the vegetation removal.
510. As the relevant operative rules identified by Ms Rushmere were not included and varied in the variation, we agree with submission S74’s position that a resource consent application under NOSZ-R15 would need to be ‘bundled’ with other relevant rules, and that this would result in a higher activity status applying for any resource consent application. We also agree with submission 74’s position that the highest activity status specified by the relevant rules will apply, and from a plan implementation perspective the controlled activity status of rule NOSZ-R15 has little relevance. A road on the site within the SNA and outside of the SNA under the proposed zoning would be a non-complying activity under rule TP-R5 regardless of the activity status specified by rule NOSZ-R15.
511. We therefore find that proposed rule NOSZ-R15 would result in regulatory duplication,

²⁶¹ Network utility structure means any *structure* associated with a *network utility* and includes, but is not limited to, pipes, valves, meters, regulator stations, support poles and towers for *lines*, transformers (other than pole mounted transformers), substations (other than overhead substations), compressor stations, pumping stations, navigational aids, meteorological installations, containers, *cabinets*, and similar *structures*. It does not include *lines*, *antennas* and *masts*.

conflict, and uncertainty for plan users. On the one hand, proposed rule NOSZ-R15 clearly intends to specifically provide for road and associated network utility infrastructure outside of the proposed SNA on the site. However, as pointed out by Ms Rushmere in her right of reply, this intent is overruled by existing operative rules within other chapters of the District Plan. Ms Rushmere's right of reply lifted the veil on the relevant rules from across the district plan, demonstrating that controlled activity status for a road on the site as notified by variation 1 is not possible due to the presence of higher-level rules that would override any rule in the variation.

512. Accordingly, we do not agree with the planning evidence of Mr Hall that the retention of rule NOSZ-R15 as a controlled activity would be the most efficient and effective way of implementing proposed Policy NOSZ-P6.
513. We agree with submission S74 - Forest & Bird that the notified controlled activity status of rule NOSZ-R15 may result in adverse effects on the environment that are inconsistent with the description of the proposed Natural Open Space zoning. This is because as a controlled activity, the Council cannot decline a resource consent application if the standards set out in NOSZ-S4 are met. We consider that the actual and potential effects of a new road through any Natural Open Space zoned should be managed via an activity status that enables the Council to decline a resource consent application should it result in unacceptable adverse effects on the environment or conflict with directive policies.
514. With respect to the most appropriate rule activity status for the management of the development types intended to be managed via NOSZ-R15, after having considered the existing policy direction within the relevant operative chapters of the District Plan, we agree with Ms Rushmere that discretionary activity status for a road through the Spur site would provide an appropriate rule category. In forming our view on the most appropriate activity status for NOSZ-R15 we have been mindful of achieving the objective of the variation as set out in the section 32 evaluation supporting the notification of the variation. However, when we consider the implementation challenges, duplication, and conflict that would be likely to arise during the implementation of NOSZ-R15, in our view, the objective of the variation could only be met in full via the amendment to rules TP-R5 (Discretionary) and TP-R5 (Non-Complying) as set out in Ms Rushmere's right of reply. As a further observation, the Panel ponders whether rule NOSZ-R15 would be necessary at all if rules TP-R5 (Discretionary) and TP-R5 (Non-Complying) had been included and amended in the variation.
515. In attempting to find a resolution to these challenges the Panel has carefully considered the scope available within submissions to make changes to operative rules TP-R5 (Discretionary) and TP-R5 (Non-Complying). Regrettably, after careful consideration of the scope available within submissions to achieve this outcome, we consider there is a problem in that there is insufficient scope available to make the amendments to TP-R5 (discretionary) and TP-R5 (non-complying) as recommended in the right of reply. On the face of it we can understand why submission S82 has been cited in the right of reply as

providing scope to amend rules TP-R5 (Discretionary) and TP-R5 (Non-Complying). However, upon careful review of submission S82 and the submitter's requested changes to the variation 1 provisions (and the submitter's reasons), including the changes requested in evidence and legal submissions provided on behalf of the submission S82, we find that scope is not available to make amendments to the rules in the Transport and Parking chapter. We set out our rationale for our finding below.

516. The specific duplication submission S82 requests be addressed via making consequential amendments to the Transportation and Parking chapter is with respect to matter of control (c) of proposed rule NOSZ-R15 relating to road alignment, location and design²⁶². The submission considers this matter of control "*duplicates matters that would otherwise be considered within the Council's discretion under rule TP-R3 in the Operative District Plan*". The Panel notes that rule TP-R3 is a permitted activity rule for site access that applies to the following zones:

- Neighbourhood Centre
- Local Centre
- Mixed Use
- Town Centre
- City Centre
- Development Area 4

517. After viewing operative rule TP-R3 in the District Plan, we note that it applies only to the zones listed above. Consequently, it is unclear to us how TP-R3 is relevant to the Silverstream Spur site under either the existing or proposed zoning. Submitter S82 did not elaborate or provide additional context on this matter via planning evidence or legal submissions.

518. The submission supports the controlled activity pathway under proposed rule NOSZ-R15, but notes that corresponding cross reference is required within the Transport and Parking chapter to '*avoid duplication*'²⁶³ and enhance the efficient implementation of proposed policy NOSZ-P6. The submission does not provide or describe specific requested amendments to the Transportation and Parking chapter, or refer to operative rule TP-R5 that specifies that roads within Open Space zones is a non-complying activity. The Panel notes that NOSZ-R15 conflicts with rather than duplicates rules within the Transport and Parking chapter, and therefore we conclude that amendments to TP-R5 were not requested by submission S82.

519. To address the duplication matter cited by submission S82, the submission requested the

²⁶² Submission 82 – The Guildford Timber Company, at page 7 within the 'Natural Open Space Chapter' row, under subheading titled 'Proposed Rule ROSZ-R15', second bullet point within the 'reasons for submission' column.

²⁶³ Submission S82 – Guildford Timber Company, Attachment 1, page 7, 2nd bullet point within the 'Reason for Submission' column for NOSZ-P7.

following amendments:

- (i) *“Consequentially amend the Network Utility, Earthworks, Transport & Parking, Ecosystems & Indigenous Biodiversity Chapters to exclude activities subject to proposed Rule NOSZ-R15 from corresponding provisions in those chapters.”*

NB – alternative drafting solutions may be appropriate for the purposes of affecting this relief.

520. The ‘decision requested’ column of the submission regarding rule NOSZ-R15 is specific to the relief sought as follows (our emphasis added):

“Amend proposed Rule NOSZ-R15, and make consequential amendments to the Network Utility, Earthworks, Transport & Parking, Ecosystems & Indigenous Biodiversity, and General Residential Chapters to address the matters summarised in the reasons for the submission immediately to the left, including: ...”

521. The Panel notes neither the operative rule TP-R5 or the non-complying activity status that would apply under the proposed Natural Open Space zone for the site is identified within the submission.

522. In an effort to identify clear scope to address the rules and activity status conflicts between proposed rule NOSZ-R15 and operative rule TP-R5 we then reviewed the planning evidence of Mr Hall and the legal submissions submitted by Ms Tancock that were provided on behalf of submission S82 in advance of the hearing and the reconvened hearing. This exercise also failed to identify clear scope to amend rules TP-R5 (discretionary) and TP-R5 (non-complying). We set out our findings of our review of the evidence and legal submissions below.

523. The planning evidence of Mr Hall²⁶⁴ includes ‘Appendix C’ which sets out in full the requested amendments to the variation by submitter S82. Mr Hall’s planning evidence is silent on existing rules within the Transportation and Parking chapter conflicting with proposed rule NOZZ-R15. Nor does the evidence identify any consequential amendments to other chapters of the District Plan to elaborate on the consequential amendments to the Transportation and Parking chapter referred to in the submission.

524. The updated planning evidence of Mr Hall²⁶⁵ provided in advance of the reconvened hearing on ecology matters requested that the controlled activity status of proposed rule NOSZ-R15 be retained as notified on the basis that Mr Hall considered this is *“the most efficient and effective way of implementing proposed Policy NOSZ-P6 as notified in the Variation, as*

²⁶⁴ *Statement of Evidence of Michael William Hall on Behalf of Guildford Timber Company LTD*, dated 17 November 2023: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-michael-hall-planning-gtc.pdf>

²⁶⁵ [https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/hall-michael-planning-rebuttal-evidence-plan-change-49-final-15.03.24-final .pdf](https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/hall-michael-planning-rebuttal-evidence-plan-change-49-final-15.03.24-final.pdf)

required by s.32 of the RMA”.²⁶⁶ Mr Hall’s opinion was conditional upon the Panel preferring the ecological evidence of Dr Keesing (for Guildford Timber Company) with respect to the extent of the SNA within the site. In the event that the Panel did not prefer the ecological evidence of Dr Keesing, Mr Hall requested that rule NOSZ-R15 be changed to a restricted discretionary activity with the matters of discretion being those that are proposed for the controlled activity rule, with the exception of the clause relevant to effects on biodiversity in the identified Significant Natural Area. Mr Hall’s updated planning evidence is also silent on rule conflicts within the Transportation and Parking chapter, and does not mention or request consequential amendments to other chapters of the District Plan.

525. The legal submissions²⁶⁷ prepared by Ms Tancock in advance of the hearing, on our reading, appear to confirm the submitter’s support for the rule making a road and associated infrastructure on the Silverstream Spur a controlled activity, as follows:

*“GTC supports new the rules in S0SZ-R15 (sic) making road and associated network utility infrastructure, including storage tanks or reservoirs, on the Silver Stream Spur a controlled activity where compliance with NOSZ-S4(a)(i) is achieved and otherwise a restricted discretionary activity.”*²⁶⁸

526. The legal submissions clarify the legal scope of the variation²⁶⁹ on behalf of submission 82 as follows:

The scope of Variation 1 is clearly limited to the Silverstream Spur area as mapped in Variation 1 and the notified provisions (as modified by relief sought by submissions and any consequential amendments arising from that).

527. The legal submissions conclude²⁷⁰ that submitter S82 requests the Panel grant the relief sought by Guildford Timber Company by approving Variation 1 with the additional minor amendments to the wording as set out in Mr Hall’s evidence. As described above, the Panel notes Mr Hall’s evidence was silent on rule conflicts between proposed rule NOSZ-R15 and operative rules in other chapters.

528. The additional legal submissions on behalf of Guildford Timber Company Ltd prepared and tabled by Ms Tancock at the hearing²⁷¹ is also silent on NOSZ-R15 and any rule conflicts or consequential amendments to provisions in the Transportation and Parking chapter.

²⁶⁶ *Statement of Rebuttal Evidence of Michael William Hall on Behalf of Guildford Timber Company LTD*, dated 15 March 2024: At para. 5.5(b): https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/hall-michael-planning-rebuttal-evidence-plan-change-49-final-15.03.24-final_.pdf

²⁶⁷ *Legal Submissions on Behalf of Guildford Timber Company LTD*, dated 17 November 2023: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-legal-gtc.pdf>

²⁶⁸ At para. 10.1.4.

²⁶⁹ At para 11.1.

²⁷⁰ At para 19.1.

²⁷¹ *Additional Legal Submissions on Behalf of Guildford Timber Company Ltd*, dated 29 November 2023: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/additional-legal-submissions-guildford-timber-company-ltd-1.pdf>

529. The additional legal submissions submitted on behalf of the Guildford Timber Company Ltd prepared by Ms Tancock in advance of the reconvened hearing on ecology matters²⁷² confirmed submitter S82's position following receipt of the revised s42A report prepared and circulated in advance of the reconvened hearing. The legal submissions identified that rule NOSZ-R15 as notified and as recommended in the updated s42A report in advance of the reconvened hearing only applies to roads and infrastructure located within the SNA on the site, and that roads and infrastructure on areas outside of the SNA would default to the Transport and Parking provisions contained in the Energy, Infrastructure, and Transport chapters of the District Plan²⁷³. The legal submissions put forward the position that this outcome *"is contrary to the stated purpose of Plan Change 49 -V1 and the intent of Policy NOSZ – P6 as it is not enabling"*. In support of this position, the legal submissions consider it questionable whether infrastructure could be placed on the Silverstream Spur if there are no rules within the variation that provide for the development of infrastructure on the Silverstream Spur outside of the SNA²⁷⁴. As a solution, the legal submissions stated that submitter S82 considered that there needs to be separate rules provided in the variation for roads and associated network utility infrastructure inside and outside of the SNA, (regardless of its extent)²⁷⁵. The submitter's requested approach as set out in the legal submissions was as follows:

(ii) For roading and network utility infrastructure outside of the SNA, controlled activity Rule NOSZ – R15 as originally notified should be retained, with non-compliance with Standard NOSZ – S4 a restricted discretionary activity with consideration restricted to the standard(s) that cannot be met; and

(iii) For roading and network utility infrastructure inside the SNA, a new restricted discretionary Rule NOSZ – R15A should be included, with matters of discretion addressing similar matters for roads and associated network utility infrastructure outside of the SNA, with non-compliance a discretionary activity.

530. The additional legal submissions are silent on rule NOSZ-R15 and the rule conflicts with operative non-complying rule TP-R5, or the necessity for any consequential amendments to provisions in the Transportation and Parking chapter.

531. As can be seen from our above consideration of submission S82, planning evidence and legal submissions, neither the Council nor submissions appear to have identified that the operative non-complying rule for roads within the open space zones would overrule any

²⁷² *Additional Legal Submissions on Behalf of Guildford Timber Company Ltd*, dated 22 March 2024:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

²⁷³ *Additional Legal Submissions on Behalf of Guildford Timber Company LTD*, dated 22 March 2024. At para. 4.31: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

²⁷⁴ At para. 4.27.

²⁷⁵ At para 4.32.

road-specific rule within the variation following the rezoning of the site to Natural Open Space Zone. It was only the result of Ms Rushmere's diligence in response to the Panel's direct questioning that this situation was revealed via the right of reply.

532. As this situation was not identified during the drafting of the variation, and was not identified within any submissions, we conclude that none of the amendments requested to the variation by submitters provide scope to make amendments to TP-R5 to exclude the Silverstream Spur site from the operative non-complying rule TP-R5.
533. We note this results in the situation where part of the stated purpose of the variation cannot be directly achieved, but we note it is already achieved in part via operative provisions in other chapters – albeit at a higher activity status than that proposed by the variation.
534. This left the Panel in a regrettable position where we needed to consider the most appropriate provisions to achieve the purpose of the variation and the relevant objectives after having come to the position that the recommended approach in the right of reply was not within the scope of submissions or the variation.
535. Before we set out our recommendations on Variation 1 provisions and submissions, we first outline the options that we identified as being potentially available to us that were within the scope of submissions.
536. For the avoidance of doubt, had the Panel identified sufficiently clear scope within submissions to address the rule conflict matter between NOSZ-R15 and the operative rules within the Transport and Parking chapter as recommended by Ms Rushmere in her right of reply, we would have recommended the following:
- (a) The adoption, with minor corrections, of Ms Rushmere's recommended amendments to rules TP-R5 (Discretionary) and TP-R5 (Non-Complying); and
 - (b) The deletion of rule NOSZ-R15 on the basis that it would become redundant with Ms Rushmere's recommended amendments to the rules in the Transport and Parking chapter.
537. However, in the absence of scope, we set out our discussion of the options below followed by our final recommendations.

Option 1

- (a) Rezone the site to Natural Open Space Zone; and
- (b) Delete rule NOSZ-R15 and standard NOSZ-S4; and
- (c) Rely upon the existing district plan rules that manage roads and network utility infrastructure.

Discussion

538. This option would remove rule conflicts and would leave the consenting path for a road of any scale or purpose on the site a non-complying activity under operative rule TP-R5 in the

Transport and Parking chapter. Other network utility infrastructure on the site, such as storage tanks or reservoirs, are already provided for as either a restricted discretionary activity²⁷⁶ or discretionary activity²⁷⁷ under operative rules within the Network Utilities chapters.

539. The Panel notes that non-complying status is a high consenting threshold that results in a potentially more difficult consenting path compared to the status quo under the existing split-zoning of the site. Success under a non-complying activity consent would depend on the nature and scale of adverse effects arising from a proposed road, and consistency with the relevant objectives and policies.
540. The higher consenting path as a non-complying activity for a road would remain under this option, which the Council could choose to address via a future plan change to amend rules TP-R5 (non-complying) and TP-R5 (discretionary).
541. The Panel considers that this option achieves the following part the stated purpose of the variation:

to facilitate appropriate zoning and provisions for the Silverstream Spur site to enable the use of the Silverstream Spur for passive recreation, conservation, and customary activities of an appropriate scale that is compatible with the natural character and amenity value of the site; and

542. However, the Panel considers that this option does not fully achieve the component of the purpose of the variation that seeks to introduce site-specific provisions to enable infrastructure including a transport corridor to make the Silverstream Spur accessible for these activities as well as opening access to potential future development. Please see our discussion on the existing operative rules for these development types above.

Option 2

- (a) Retain the existing split-zoning of the site as General Residential Zone and General Rural Zone; and
- (b) Delete NOSZ-R15, NOSZ-S4 and the associated relevant policy direction; and
- (c) Retain the identification of the SNA and associated rule and policy framework (as recommended to be amended in response to submissions).

Discussion

543. The status quo activity status for new roads under the existing split-zoning of the site is Discretionary under rule TP-R5 (Discretionary). Although this option would remove the non-complying activity status of a road under existing rule TP-R5 (Non-Complying), it would fail to achieve the main purpose of the variation, which is to enable the use of the Silverstream

²⁷⁶ Water reservoirs are a restricted discretionary activity under operative rule NU-R25 within the Network Utilities chapter.

²⁷⁷ *Network utility structures* are a restricted discretionary activity under rule NU-R20, whilst network utilities that are not specifically listed are a discretionary activity under rule NU-R27 within the Network Utilities chapter.

Spur for passive recreation, conservation, and customary activities of an appropriate scale that is compatible with the natural character and amenity value of the site via rezoning the site to Natural Open Space Zone.

544. A resource consent application for a road and network utility infrastructure would, depending upon its route, be considered against the relevant objectives and policies of the General Residential Zone, General Rural Zone, or both. As with Option 1, the objectives and policies of other relevant district-wide chapters would continue to apply under this option.

Option 3

- (a) Rezone the site to Natural Open Space; and
- (b) Amend rule NOSZ-R15 to remove duplication with rules in the Network Utility chapter, but leave provision for a road within the rule; and
- (c) Amend the activity status of NOSZ-R15 to a restricted discretionary or discretionary activity; and
- (d) Delete NOSZ-S4; and
- (e) Make other amendments to rule NOSZ-R15 to remove.

Discussion

545. This option leaves the rule conflict between rules NOSZ-R15 and TP-R5 (non-complying) unresolved, resulting in a road on the site being a non-complying activity under the higher-level operative rule TP-R5. This could be addressed by the Council via a separate future plan change process that amends the provisions in the NOSZ and the Transport and Parking chapter to address the rule (and potential policy direction) conflict. Other network utility infrastructure would continue to be a restricted discretionary or discretionary activity under the provisions of the Network Utility chapter.
546. At first glance we note this option would appear to achieve the stated purpose of the variation by rezoning the site and providing a specific rule for a road through the site, but it would ultimately prove ineffective without an additional future plan change to resolve the rule conflict issue that exists within the Transport and Parking chapter. We note that this option would require the Council to knowingly put in place a rule which could not be applied without being overridden by a higher-level non-complying rule.

Our recommended approach

547. We note that a future plan change would be required under options 2 and 3 to address the identified rule conflict for a road on the site, and we consider such an outcome would not be an effective or efficient method to achieve the relevant objectives. With this unavoidable necessity for a future plan change under options 1 and 2 in our mind, we have focused on ensuring the final recommended variation provisions are workable and can be implemented without resulting in implementation uncertainty, rule conflict, or the requirement for a future plan change.

548. Our recommended approach is to progress with the first option to make amendments to the variation to remove provisions that would be overridden by, or be in conflict with existing operative provisions located elsewhere in the District Plan. This option would remove the illusion that a seemingly more permissive site-specific consenting path for a road and associated network utility infrastructure on the site exists.
549. We acknowledge that the operative consent pathway is not as certain as that proposed by the variation²⁷⁸, however as we set out in our discussion above, we conclude that a consent pathway for a road and associated infrastructure already exists. Whether the existing consent pathway turns out to be viable will, in our view, be determined by the actual and potential effects on the environment of any particular roading and infrastructure design for the site, and how it aligns with the relevant policy direction.
550. It is not appropriate for the Panel, as part of a district plan change and variation process, to speculate on the actual and potential effects on the environment from any particular potential future roading or infrastructure proposal that may arise from a potential future resource consent application for network utilities located on an unspecified location within or through the site. We have focused on ensuring the provisions are workable, effective, efficient, and will not result in unanticipated outcomes with respect to social, environmental, economic and cultural benefits and costs.
551. On this basis the Panel recommends that proposed rule NOSZ-R15 and standard NOSZ-S4 be deleted as shown in **Appendix 4**, and that the relevant submissions and further submissions be accepted, accepted in part, or rejected for the reasons as set out above and in **Appendix 2**.

Section 32AA Evaluation

552. Please see **Appendix 6** for the mandatory RMA section 32AA evaluation for our recommended amendments to NOSZ-R15 and NOSZ-S4.

NOSZ-R22

Background

553. Proposed rule NOSZ-R22 would make the removal of indigenous vegetation on the Silverstream Spur Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189) a discretionary activity.
554. NOSZ-R22 as notified was as follows:

NOSZ-R22	Removal of indigenous vegetation on the Silverstream Spur Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189)
	1. Activity Status: DIS

²⁷⁸ Due to the non-complying activity status of a road on an Open Space zoned site.

555. The rule is intended to work in conjunction with the proposed map identifying the extent of the SNA on the site.

Submissions

556. Submission S71.2 – Mary Beth Taylor opposed rule NOSZ-R22. We summarise the submitter’s reasons for opposing the rule as arising from the fact that the rule is part of suite of proposed provisions that are intended to enable a transport/infrastructure corridor through the site, and the adverse effects this would have on the ecological corridor function the site provides. The views expressed within submission S71.2 were supported by three further submissions.

557. Submission S74.6 – Forest & Bird supported rule NOSZ-R22 and requested it be retained as notified. The submission was supported by six further submissions which supported the submitter’s views.

558. Submission S79.6 – Upper Hutt Branch of Forest & Bird requested the rule be retained but to amend the terminology used to define the area the rule applies to. This submission was supported by two further submissions.

559. Submission S82.6 – Guildford Timber Company opposed rule NOSZ-R22 and requested its deletion on the basis that the submitter considered that the evidence base underpinning the notification of the variation did not support the identification of a SNA, or accurately identify the area proposed as SNA. In addition, the submission noted that the rule does not clarify why the rule is needed or how it is intended to be applied in conjunction with the rules in the Ecosystems and Indigenous Biodiversity chapter in the operative District Plan.

560. Submission S82.6 was opposed by four further submissions who opposed the request to delete rule NOSZ-R22. The submission was also opposed by further submission FS17 – Forest & Bird on the basis that the justification given by the submitter fails to consider the Council’s obligations under s6(c) of the RMA and its requirements to give effect to the NPS-IB. The further submitter contended that the Council has conducted an ecological survey identifying SNAs in the District, and that just because SNAs are still draft in policy, it doesn’t mean they don’t exist in reality and that section 6 RMA matters don’t apply.

561. Submission S93.3 – Te Rūnanga o Toa Rangatira supported rule NOSZ-R22 as the submitter considered that discretionary activity status is more appropriate if specific conditions or standards are not met while considering proposals within the Natural Open Space Zone. Submission S93.3 was supported by two further submissions.

562. A number of submissions supported proposed rule NOSZ-R22 on the basis that it would assist in the protection of the identified indigenous vegetation within the proposed SNA. We do not directly address these submissions in our report, however they can be viewed in **Appendix 2**.

S42A Report Author Recommendation

563. The s42A report recommended that discretionary activity status be changed to restricted discretionary, albeit no associated matters of discretion were included. The Panel queried this during the hearing and Ms Rushmere provided a suite of recommended matters of discretion with the updated s42A report prepared for the reconvened hearing on ecology matters.
564. Ms Rushmere confirmed her opinion that restricted discretionary activity status is appropriate, and that this would enable all effects to be appropriately assessed and addressed, and would also provide a stronger method to give effect to the NPS-IB in respect of the Silverstream Spur in advance of a wider SNA plan change²⁷⁹.
565. Ms Rushmere also recommended an amendment to clarify the name of the proposed “natural area” identified on the maps to the “Silverstream Spur Significant Natural Area”.
566. No additional amendments were recommended to NOSZ-R22 in the right of reply, however Ms Rushmere noted that there are submissions requesting the retention of discretionary status should the Panel consider that to be more appropriate²⁸⁰.

Submitter Evidence and Information

567. Notwithstanding the request by submission S82.6 – Guildford Timber Company to delete proposed rule NOSZ-R22, the planning evidence submitted by Mr Hall for the Guildford Timber Company for the initial hearing supported the consequential amendments to include NOSZ-R22 on the basis that Mr Hall considered it would provide certainty to infrastructure planners for how to plan for future infrastructure for the Southern Growth Area²⁸¹. Appendix C to Mr Hall’s evidence clarifies that his comments related to the restricted discretionary activity provisions recommended by the s42A report prepared by Ms Thomson.
568. The legal submissions submitted by Ms Tancock on behalf of submission S82 – Guildford Timber Company for the initial hearing provided clarification that the submitter was satisfied that rule NOSZ-R22 as a restricted discretionary activity was acceptable on the proviso that the mapped extent of the SNA are amended as out in the ecology evidence of Dr Keesing²⁸². Ms Tancock contended that restricted discretionary activity status for indigenous vegetation removal provides sufficient protection to allow close consideration

²⁷⁹ The updated s42A report for Variation 1, dated 5 March 2024. At para. 266:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/updated-council-evidence-report-section-42a-report-for-variation-1-to-pc49.pdf>

²⁸⁰ At para. 193 of the right of reply.

²⁸¹ Statement of Evidence of Michael Hall on Behalf of Guildford Timber Company Ltd, dated 17 November 2023. At para. 6.53: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-michael-hall-planning-gtc.pdf>

²⁸² Legal Submissions on Behalf of Guildford Timber Company, dated 17 November 2023. At para. 10.1.10: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/statement-of-evidence-legal-gtc.pdf>

and assessment on a case-by-case basis at resource consent stage, and that it would also give Council the option of whether to grant or refuse consent.

569. Mr Hall submitted updated planning evidence on behalf of submission S82 – Guildford Timber Company for the reconvened hearing on ecology matters. In his evidence, Mr Hall expanded upon his original evidence submitted for the initial hearing by confirming that, in his professional opinion, restricted discretionary activity status would be appropriate should the Panel retain the extent of the SNA rather than amend it as set out in Dr Keesing’s ecology evidence²⁸³. Mr Hall’s evidence then states that²⁸⁴:

Rule NOSZ – R22 intends to control the removal of indigenous vegetation in the Silverstream Spur SNA. While the notified Variation 1 to PC49 provided for this activity as a discretionary activity, the s42A Report provided to the hearing recommended the activity status be changed to restricted discretionary activity and I support this recommendation, subject to the removal of matter of discretion 3.

570. Mr Hall’s evidence did not specify his preference for the activity status of rule NOSZ-R22 in the event that the ecology evidence of Dr Keesing was not preferred with regard to the mapped boundaries of the SNA on the site. We have therefore made an assumption that, based on the legal submissions presented by Ms Tancock, that should we find that the retention of the notified discretionary activity status of rule NOSZ-R22 be appropriate, that submitter S82 would continue to request the deletion of the rule as per submission S82.6.

571. The additional legal submissions prepared by Ms Tancock on behalf of Guildford Timber Company Ltd described additional requested changes to rule NOSZ-R22. Ms Tancock noted that rule NOSZ-R22 only provides for the removal of indigenous vegetation if located within the SNA, and not in areas outside the SNA²⁸⁵. Ms Tancock noted that there is no provision in PC49 for the removal of indigenous vegetation in the Natural Open Space Zone, and that it appears the only operative provisions managing this apply to subdivision. Ms Tancock put forward the position that this situation could be addressed as follows, but clarified that the Guildford Timber Company did not support the approach as set out below:

- (a) For the removal of indigenous vegetation outside of the SNA a new controlled activity Rule NOSZ–R22 should be provided with matters of control similar to those recommended in the updated s42A Report. Non-compliance with the matters of control should be a restricted discretionary activity; and
- (b) For the removal of indigenous vegetation inside the SNA, the restricted discretionary Rule NOSZ – R22 included in the updated s42A Report should be re-numbered rule

²⁸³ At para. 5.7: https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/hall-michael-planning-rebuttal-evidence-plan-change-49-final-15.03.24-final_.pdf

²⁸⁴ At para 5.9.

²⁸⁵ Additional Legal Submissions on Behalf of Guildford Timber Company, dated 22 March 2024. At para 4.38: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

NOSZ – R22A, with non-compliance with the matters of Council has restricted its discretion to a discretionary activity.

Discussion and Recommendation

572. As an introductory comment to our discussion and recommendation on NOSZ-R22, we understand that there has been some confusion over the activity status that arose between the notification of the Variation and the recommended provisions contained in the initial s42A report. At the initial hearing, the Panel noted that the recommended Variation 1 provisions attached to the s42A report included what appeared to be a recommended amendment to NOSZ-R22 changing it from a discretionary activity to a restricted discretionary activity – however it did not include any standards or matters of discretion. Upon our request, matters of discretion were provided with the updated s42A report prepared in advance of the hearing on ecology matters.
573. In the process, it appears to us that submissions were not checked to confirm there was scope for a change in activity status from discretionary to restricted discretionary. As we requested clarification be provided to NOSZ-R22 via including matters of discretion, we take some responsibility for this misunderstanding.
574. Proposed rule NOSZ-R22 was notified as a discretionary activity. We have checked submissions for scope to amend the activity status to restricted discretionary and have not identified any submissions requesting this. On the contrary, there were a number of submissions requesting retention of the rule as a discretionary activity as notified.
575. We agree with submissions requesting the terminology used within the rule be clarified so it is clear that it applies to indigenous vegetation within the SNA as shown on a map. We make recommendations to achieve this in **Appendix 4**.
576. Regarding the stated reasons for submission S82.6 – Guildford Timber Company’s opposition to rule NOSZ-R22 and request to delete it, we consider the submitter’s concerns have been addressed on the basis that it’s ecology expert has confirmed a SNA exists on the site²⁸⁶.
577. We do not consider the potential approach put forward by Ms Tancock²⁸⁷ on behalf of submission S82 – Guildford Timber Company to be necessary or appropriate, and note even the submitter does not support the potential two-rule approach outlined by Ms Tancock.
578. We therefore recommend rule NOSZ-R22 be retained as a discretionary activity as notified as set out in **Appendix 4**, and that all relevant submissions and further submissions be

²⁸⁶ As set out in our discussion under the heading ‘Ecological Values and Spatial Extent of SNA’ above.

²⁸⁷ *Additional Legal Submissions on Behalf of Guildford Timber Company Ltd*, dated 22 March 2024. At para 4.42: <https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/reconvened-hearing/6.-gtc-legal-submission.pdf>

accepted, accepted in part or rejected for the reasons set out above and in **Appendix 2**.

New Definition for Biodiversity Offsetting

Background

579. As notified, Variation 1 referred to 'biodiversity offsetting' within proposed policy NOSZ-P7 but did not include a definition for biodiversity offsetting.

Submissions

580. Submission S74.4 – Forest & Bird requested the inclusion of a definition for biodiversity offsetting, that includes a requirement that any offset proposed meets the principles of offsetting. The submission requests that principles for offsetting be included in an appendix to the District Plan. This was supported by four further submissions, as shown in Appendix 2.

S42A Report Author Recommendation

581. The s42A report notes that the RMA does not provide a definition for biodiversity offsetting, but the NPS-IB does. The s42A recommends the NPS-IB definition be included in the Variation.

Discussion and Recommendation

582. We consider that a definition for biodiversity offsetting as per the NPS-IB will assist plan users in the application of offsetting under proposed policy NOSZ-P7.

583. With respect to the submission's other request to include principles for biodiversity offsetting as an appendix to the District Plan, we do not consider this to be necessary now the NPS-IB is in place and includes the principles in Appendix 3: Principles for biodiversity offsetting.

584. We recommend that a definition for biodiversity offsetting be included into the Interpretation section of the District Plan as shown in **Appendix 4**, and that the relevant submission and further submissions be accepted in part for the reasons set out above and within **Appendix 2**.

Special Amenity Landscapes

Background

585. As notified, Variation 1 did not include the inclusion of any proposed identified landscape overlays.

Submissions

586. Submissions S42.2 – Pat van Berkel, S71.1 & S71.3 – Mary Beth Taylor, S77.1 – Tony Chad,

S88.5 – Silver Stream Railway Inc, and S90.4 – Rhys Lloyd requested the Variation include special amenity landscape provisions. These submissions are supported by numerous further submissions as set out in Appendix 2.

S42A Report Author Recommendation

587. The s42A report advised that Council has been carrying out work on potential landscape provisions including consultation with the Landscape Community Reference Group, who recommended to Council that the District Plan does not include special amenity landscapes. The s42A report also advised that this recommendation was endorsed by Council at a meeting held on February 2023²⁸⁸.

588. Accordingly, the s42A report recommended that these submissions be rejected as Council has already made a decision not to include them in the District Plan.

Discussion and Recommendation

589. We note that distinct from ‘outstanding natural landscapes’ that must be identified and protected as a matter of national importance under the RMA, the Council has the discretion to include special amenity landscape provisions in a district plan. This discretion is confirmed by policy 27 of the RPS²⁸⁹.

590. The Panel has no landscape evidence which it could consider, and does not recommend changes to decisions the Council has already made following consultation with a community consultation working group.

591. We therefore recommend the relevant submissions and further submissions be accepted in part or rejected for the reasons above and as set out in **Appendix 2**.

Customary Activities

Background

592. As notified, Variation 1 did not include any specific provisions for customary activities, albeit the section 32 evaluation did note that the proposed rezoning of the site to Natural Open Space zone would allow for the undertaking of customary activities – as proposed by PC49²⁹⁰.

Submissions

593. Submission S93.4 – Te Rūnanga o Toa Rangatira Inc noted that although the variation enables access for customary activities it does not include any meaningful provisions for customary activities. The submission goes on to state that:

²⁸⁸ At para. 228.

²⁸⁹ As explained at 226 of the s42A report.

²⁹⁰ At paras. 4.2.3 and 4.3.6.

‘We are more than happy to work with you and with our Tangata Whenua partners in the rohe to come up with a solution that focuses on producing such provisions with your kaimahi.’

594. Submission S93.4 was supported by two further submissions.

595. The submission does not request any specific changes to the Variation provisions.

S42A Report Author Recommendation

596. The s42A advised that²⁹¹ Council is engaging with Ngati Toa Rangitira and other mana whenua to review all provisions relevant to tangata whenua, and that this is a separate part of the Council’s rolling review programme. Further, the s42A advised that the provision of customary activities as a permitted activity in the open space and recreation zones is intended as an enabling placeholder in these chapters as they were notified in advance of the tangata whenua review work.

Discussion and Recommendation

597. As the Panel is advised that Council is already engaged with Te Rūnanga o Toa Rangitira Inc to review all relevant provisions of the District Plan, combined with the fact that the submission does not request any specific changes to the Variation provisions, we do not recommend any changes to the provisions in response to submission S93.4.

598. We recommend submission S93.4 and all relevant further submissions be accepted in part as set out in **Appendix 2** on the basis that the collaborative work referred to in the submission appears to be already scheduled or is already taking place.

Sites and Areas of Significance to Māori

Background

599. As notified, Variation 1 did not include any provisions directly related to sites and areas of significance to Māori (SASMs).

Submissions

600. Submission S93.2 - Te Rūnanga o Toa Rangitira Inc states:

‘The proposal for this variation includes the protection of identified significant natural areas on Silverstream Spur from development. We ask that identifying sites and areas of significance to Māori is made a priority so that they are protected from development in the Silverstream Spur. We are aware that current operative District Plan does not have a legal sites and areas significant to Māori schedule and an associated Chapter providing protection and maintenance of these sites and areas.’

601. The submission does not request any specific changes to Variation 1 provisions.

²⁹¹ At para 235.

S42A Report Author Recommendation

602. The s42A report acknowledged²⁹² that there is a gap within the representation of Upper Hutt's heritage, particularly the visibility of sites and areas of significance to Māori. It also noted that the Council is currently completing a rolling review of our District Plan which includes introducing a Sites and Areas of Significance to Māori (SASM) and tangata whenua (TW) chapters.

603. The s42A also stated²⁹³:

'A preliminary archaeological assessment of the Silverstream Spur was carried out on 12 October 2022 by Victoria Grouden from Capital Heritage. This involved a site visit and walkover of the spur, with Ngāti Toa Rangitira representatives present looking for any evidence of occupation. The preliminary report is attached as Appendix C to this report. The report is inconclusive about whether the Spur has any archaeological significance and recommends the inclusion of an accidental discovery protocol for all earthworks on the site.'

604. As a result, the s42A report recommended the inclusion of an accidental discovery protocol to the provisions for the Silverstream Spur.

Discussion and Recommendation

605. Although the Panel agrees that the inclusion of an accidental discovery protocol to the Variation provisions would be valuable, we have been unable to find scope within submissions to make such a recommendation. The Panel spent a considerable amount of effort reviewing all submissions and further submissions in its search for potential scope to recommend this change, but could find no clear scope upon which to base the recommendation.

606. Although we understand and acknowledge the s42A author's admirable reasons for recommending the accidental discovery protocol be added to the provisions, we cannot see where submission S93 or any other submission requests this change.

607. We are also mindful that no other persons potentially interested in this matter have had the opportunity to consider the recommended change and make submissions on it.

608. We note that Council may wish to investigate the potential incorporation of an accidental discovery protocol into the Districtwide Earthworks chapter to apply to all earthworks within Upper Hutt as part of the District Plan rolling review programme. In the meantime, the Panel notes that the provisions of the Heritage New Zealand Pouhere Taonga Act will continue to provide protection to any SASMs that may be accidentally discovered on the site.

609. We recommend that submission S93.2 and the relevant further submissions be accepted

²⁹² At para 241.

²⁹³ At para 244.

in part for the reasons above and as set out in **Appendix 2** on the basis that the Council and the submitter appear to be working towards addressing SASMs as part of the District Plan rolling review.

14.0 Overall Conclusion and Recommendations

610. This Plan Change and Variation process occurred when there was a flurry of legislation and regulation coming into effect. The straight forward PC49 that was proposed to give effect to an element of the National Planning Standards became much more complex when Variation 1 was added into the mix. We recognise that this recommendation is lengthy and complex – but it is unavoidable. We have considered the relevant matters in s32 and evaluated the appropriateness of the Proposed Plan Change 49 and Variation 1 provisions against the statutory framework, taking into account our findings in regard to the management of effects on the environment.
611. We have concluded that, with the exception of the provisions we recommend be deleted or withdrawn, PC49 and Variation 1 will meet the overall purpose of the RMA. This is subject to the amendments proposed by the Council’s reporting planners and the final recommendations by the Panel in response to submissions and evidence before the initial hearing and reconvened hearing.
612. Based on our consideration of all the material before us, including the s32 evaluation reports, s42A reports, submissions, further submissions, the information and evidence presented at the hearings, and the relevant statutory matters, and for the reasons we set out above and within Appendices 1 and 2, we recommend to the Council that:
- (a) Proposed Plan Change 49 and Variation 1 be accepted subject to the amendments identified in Appendices 3 and 4.
 - (b) That all submissions and further submissions on PC49 and Variation 1 be accepted, accepted in part or rejected for the reasons set out in the preceding report sections above and for the reasons recorded in Appendices 1 and 2.
 - (c) That Council formally withdraw the following sites from PC49 pursuant to Clause 8D of Schedule 1 of the RMA:
 - (i) The Wellington Royal Golf Club. The rezoning of this site is recommended to be considered again when Council progresses a plan change to review other Special Activity zoned sites.
 - (ii) 27 Blenheim Street; and
 - (iii) Any other sites that have been rezoned by the Council’s IPI where the operative zoning is not consistent with that proposed by PC49.
 - (d) Pursuant to Clause 10 of Schedule 1 of the RMA, Council gives notice of its decisions on submissions on PC49 and Variation 1.

613. There are also several matters that we consider should be progressed by Council at an appropriate time in the future – noting that we understand that work is already underway on some of these:

- (e) That a future plan change addressing sites and areas of significance to Māori is prioritised, particularly with respect to the urban environment, earthworks, and accidental discovery.
- (f) That a future plan change addressing firefighting requirements is investigated to ensure firefighting requirements are adequately addressed within all zones insofar as provisions that do not duplicate the requirements of other legislation.



Sue Wells (Chair)



Ina Kara-France



Matt Muspratt

**Independent Hearing Commissions
For the Upper Hutt City Council**

Recommendation dated **31 July 2024**

15.0 Appendix 1 – Recommendations on PC49 submissions and further submissions

See separate attachment.

16.0 Appendix 2 - Recommendations on V 1 submissions and further submissions

See separate attachment.

17.0 Appendix 3 – Recommended PC49 Provisions

See separate attachment.

18.0 Appendix 4 – Recommended Variation 1 Provisions

See separate attachment.

19.0 Appendix 5 – Final Recommended PC49 District Plan Maps

See separate attachment.

20.0 Appendix 6 – Section 32AA Evaluations

See separate attachment.