

**BEFORE THE HEARING PANEL
AT UPPER HUTT**

IN THE MATTER OF the Resource Management Act 1991
AND
IN THE MATTER OF Proposed Plan Change 49 – Open Spaces
(PC49) to the Operative Upper Hutt District
Plan; and Variation 1 to PC49.

**LEGAL SUBMISSIONS
ON BEHALF OF THE ROYAL FOREST AND BIRD
PROTECTION SOCIETY INCORPORATED
22 March 2024**

MAY IT PLEASE THE PANEL

1. These further legal submissions are presented on behalf of the Royal Forest and Bird Protection Society Inc (**Forest & Bird**), in response to the Panel's request contained in Minute 9, dated 20 February 2024.

Summary of Forest & Bird's position

2. Forest & Bird's position remains that it would not be appropriate for PC49 to provide for a transport corridor through the Silverstream Spur Natural Open Space Zone (**Spur NOSZ**).
3. The likely adverse effects of a transport corridor on areas of significant indigenous vegetation and significant habitats of indigenous fauna (**SNA**) within the Spur NOSZ are certainly important considerations for the Panel.
4. However, the Guildford Timber Company Ltd (**GTC**) evidence and submissions have placed disproportionate emphasis on this SNA question, in support of GTC's argument that a transport corridor through the Spur NOSZ would be appropriate so long as it does not directly encroach on an SNA.
5. It is respectfully submitted that an approach which focuses solely on the question of whether there is direct encroachment on an SNA would be incomplete, and that the Panel must also consider the purpose of the Natural Open Space Zone when making its decision.
6. The Open Space provisions in the District Plan are focused on protecting open spaces for community use and allowing for recreational activities to occur.¹ In the Natural Open Space Zone (**NOSZ**) the emphasis is on passive recreation and nature interaction and associated ecological values.²
7. The expert ecological evidence provided by Dr Maseyk at the hearing was directed towards these broader ecological values that are recognised and provided for by the NOSZ, including the potential for these values to be enhanced over time.

¹ S 32 report at 5.1.1

² S 32 report at 7.9.14; with **NOSZ-O1** being to retain natural environmental values, **NOSZ-O2** being to protect indigenous biodiversity values, and retain indigenous vegetation associated with those values, **NOSZ-P2** being to provide for built development that does not adversely affect indigenous biodiversity, **NOSZ-P3** being to avoid developments that are incompatible with indigenous biodiversity or that result in a loss of indigenous biodiversity values, and **NOSZ-P4** being to maintain and enhance indigenous biodiversity.

8. There is no evidence whatsoever that the transport corridor promoted by GTC would support or enhance the Spur NOSZ. Instead, the Panel is being asked to step outside the Open Space planning context of PC49 and to speculate about potential future directions in urban planning for the wider Upper Hutt District.
9. It is submitted that speculation about the Southern Growth Area (**SGA**) cannot provide an adequate evidential or policy basis for including the proposed transport corridor provisions in PC49.

Spatial extent of SNA within the Spur NOSZ

10. For the purposes of the re-convened hearing, Forest & Bird supports the conclusions of Mr Goldwater in relation to the spatial extent of SNA within the Spur NOSZ.
11. Mr Goldwater regards the area of ponga-mamaku tree fernland between the remnants of beech-kamahahi forest as being significant because it "... provides a contiguous east-west linkage between the two forest remnants, while also providing a partial buffering function".³
12. It appears that Mr Goldwater was not provided with a copy of Dr Maseyk's evidence. Nevertheless, Mr Goldwater's conclusions, particularly in relation to the ecological context criterion under the RPS and NPS-IB, are broadly consistent with those of Dr Maseyk. In her evidence, Dr Maseyk referred to the adverse effects of a road through the Spur NOSZ, including "... the fragmentation of habitat (and consequential disruption to ecological connectivity)".⁴
13. As discussed below, it now appears from the planning evidence of Mr Hall that GTC's preferred scenario is for a road to pass directly through the area of ponga-mamaku tree fernland that has been identified by Mr Goldwater as SNA.
14. As Mr Goldwater observes, this would "... permanently bisect a core part of the Spur, which in turn could compromise the linkage function of the ponga-mamaku tree fernland that presently sits between the two higher-value areas of beech-kamahahi forest".⁵
15. Dr Keesing acknowledges in his evidence that "... linkage and buffering requirements or functions and their importance are virtually impossible to prove or disprove".⁶
16. In this subjective context, the fact that Dr Keesing is providing evidence on behalf of the company that wants to build a road through the disputed area is relevant. It is submitted that the evidence of Mr Goldwater should be preferred, on the

³ Mr Goldwater at [23]

⁴ Dr Maseyk at [6.6] and [5.19]

⁵ Mr Goldwater at [32]

⁶ Dr Keesing, rebuttal at [3.10]

basis that: (a) he is better placed as an expert to make an impartial subjective judgment; and (b) he is also broadly supported in his conclusions by the expert evidence of Dr Maseyk.

Spatial extent and route of proposed transport corridor

17. Mr Hall has suggested in his second statement of evidence that the area required for a transport corridor, and therefore also its environmental effects, have been “grossly overstated”.⁷ Mr Hall bases his assessment on Mr Reid’s evidence that “a road of only a minimum of 880m in length would be required to facilitate access to the Southern Growth Area”.⁸

18. It is submitted that there are at least three problems with Mr Hall’s reasoning:

(a) GTC have not provided evidence of the proposed route of an 880m road through the Spur NOSZ, nevertheless it is clear that it would need to pass directly through the area of ponga-mamaku tree fernland that Mr Goldwater has identified as SNA.

(b) When discussing the “minimum road length of 880m”, Mr Reid also discussed the need for associated earthworks to meet the 1:8 gradient requirement.⁹ However, no details of the extent of such earthworks have been provided. Mr Hall’s calculation of the spatial extent of a transport corridor also does not appear to allow for a detention pond to manage surface water run-off.

(c) As acknowledged by Mr Read,¹⁰ the most direct route would not be optimal in terms of facilitating recreational access to the Spur NOSZ, it is simply designed to facilitate vehicle access to GTC’s adjacent land.

19. Although the likely spatial extent of a transport corridor is an important consideration, even more important is the extent to which a transport corridor would have negative effects on indigenous biodiversity and other ecological values. It is submitted that a shorter road that directly transects an SNA, or an area holding particularly high ecological values, would be even less appropriate than a longer road through the Spur NOSZ that does not transect such an area.

20. On the basis that Mr Goldwater’s SNA assessment is accepted by the Panel, it is submitted that GTC’s proposal for a road that transects this SNA is entirely inappropriate and should not be provided for in PC49, whether as a discretionary activity or otherwise.

⁷ Mr Hall, rebuttal at [4.5] and [5.14]

⁸ Mr Hall, rebuttal at [4.3]

⁹ Mr Read at 11.1(ii)

¹⁰ Mr Read at 11.1(ii), second bullet point.

National Policy Statement on Indigenous Biodiversity (NPS-IB)

21. 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 hierarchy.
22. Forest & Bird acknowledges that a discretionary activity status under NOSZ-R15 would enable Council to apply the effects management hierarchy before granting a resource consent.
23. Nevertheless, the provision for a transport corridor in NOSZ-R15 would introduce a substantial tension between the NPS-IB and the NOSZ provisions, which is likely to be difficult for consent officers to resolve. Forest & Bird therefore maintains its submission that it would be more appropriate to remove NOSZ-R15 now, thereby avoiding this inherent tension in the District Plan.

Activity Status for NOSZ-R15 and R-22

24. Mr Hall has argued that it makes no sense to require “a more restrictive” discretionary resource consent application for infrastructure (NOSZ-R15), in circumstances where removal of indigenous vegetation is a restricted discretionary activity (NOSZ-R22).¹¹
25. Although Forest & Bird maintains that it would be more appropriate to delete NOSZ-R15, the next best alternative would be for this activity to be fully discretionary. This reflects the fact that there are likely to be other matters that would need to be considered (in addition to the removal of indigenous vegetation) in the context of a resource consent application. For example, any effects on the health and well-being of freshwater bodies, any direct effects on indigenous fauna, and any associated effects on the special amenity features of the Spur NOSZ.

National Policy Statement on Urban Development (NPS-UD)

26. In his statement of rebuttal evidence, Mr Hall suggests that Council’s proposed amendments are not the most efficient and effective way of achieving the requirements of the NPS-UD and Wellington RPS.¹²
27. It is submitted that the main difficulty with this argument is that the NPS-UD objectives are very high-level and would need to be appropriately incorporated into regional and district planning instruments before they can be sensibly applied in the context of PC49.

¹¹ Mr Hall, rebuttal at [5.7]

¹² Mr Hall, rebuttal at [5.11]

28. For example, Objective 6 of the NPS-UD requires that:

Local authority decisions on urban development that affect urban environments are:

- (a) integrated with infrastructure planning and funding decisions; and
- (b) strategic over the medium term and long term; and
- (c) responsive, particularly in relation to proposals that would supply significant development capacity.

29. It is respectfully submitted that it is simply not possible for the Panel to make the kind of detailed and integrated planning decisions that are required by Objective 6 in the context of PC49. Forest & Bird understands that the intention of Council is that these matters should be considered as part of PC50 which, as notified, does not currently make provision for the SGA.

30. It is submitted that Policy 6 of the NPS-UD is not relevant to PC49-V1, because the SGA is not anticipated by the relevant RMA planning documents intended to give effect to the NPS-UD.¹³

Wellington Regional Policy Statement (RPS)

31. Very similar issues arise in relation to Mr Hall's evidence on the RPS. His evidence on this subject would carry more weight if the SGA were already provided for in plans for urban development, however this is not the case. On the contrary, as previously submitted, the current direction of policy is towards encouraging more compact urban form.

32. It is submitted that making provision for a road corridor (particularly where this would detract from the ecological and amenity values of NOSZ), to service an urban growth area that is not currently defined in regional or district planning documents, would not represent a co-ordinated approach to the consideration of development and infrastructure.

33. Also, in relation to the RPS, the Panel is asked to note that Objective 16 (supported by Policies 23, 24 and 47) requires that indigenous ecosystems and habitats with significant biodiversity values are maintained and restored to a healthy functioning state.

¹³ See NPS-UD, Policy 6(a) and (b).

Conclusions

34. Based on GTC's planning evidence, it appears that GTC's intention is for a road to transect the SNA identified by Mr Goldwater, passing through the area of this SNA that is disputed by Dr Keesing.
35. If the Panel accepts Mr Goldwater's (and therefore Council's) assessment of the SNA, then it would be entirely inappropriate to make provision for the road sought by GTC.
36. Even if the Panel prefers Dr Keesing's evidence as to the spatial extent of the SNA, it would still be inappropriate to make provision for the road. This is due to the significant adverse effects the road would be bound to have on the ecological and amenity values of the Spur NOSZ.
37. Departing from the balance of the NOSZ objectives and policies by including NOSZ-P6 and NOSZ-R15 would need to be justified by clear planning evidence in support of the SGA, which does not currently exist.



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