

BEFORE THE INDEPENDENT HEARINGS PANEL

AT THE UPPER HUTT CIVIC CENTRE, 838 – 842 FERGUSSON DRIVE, UPPER HUTT

UNDER SCHEDULE 1 OF THE RESOURCE MANAGEMENT ACT 1991

IN THE MATTER OF Plan Change 49 Open Spaces and Variation 1 to Plan Change 49

Silverstream Spur

BETWEEN Various submitters

**AND Upper Hutt City Council
Respondent**

**COUNCIL REPLY ON ALL MATTERS RAISED DURING PC49 and Variation 1 to PC49 Hearing –
SUZANNE RUSHMERE ON BEHALF OF UPPER HUTT CITY COUNCIL**

Date: 17 May 2024

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INTRODUCTION

1. My full name is Suzanne Rushmere. I am Acting Planning Policy Manager at Upper Hutt City Council.
2. I have read the evidence, tabled statements, legal submissions, and supplementary evidence provided by submitters on Plan Change 49 Open Spaces (PC49) and Variation 1 to Plan Change 49 Silverstream Spur (Variation).
3. I have prepared this Council right of reply on behalf of Upper Hutt City Council (the Council) in respect of matters raised during the hearing.
4. I am authorised to provide this evidence on behalf of the Council.

QUALIFICATIONS, EXPERIENCE AND CODE OF CONDUCT

5. I have held the position of Acting Planning Policy Manager since January 2024 but have been employed by Upper Hutt as a Senior Policy Planner since August 2022.
6. Prior to working at UHCC, I was employed by Kapiti Coast District Council in the District Plan and Rooding teams.
7. I hold the qualifications of Bachelor of Arts (Honours) in Planning from Oxford Brookes University (UK), Post Graduate Diploma in Planning from Oxford Brookes University, and a Master of Science in Planning from Oxford Brookes University. I am a chartered member of the Royal Town Planning Institute (UK).
8. In my role as a policy planner, I have undertaken the following tasks and responsibilities:
 - a) Preparing section 42A reports for Proposed District Plan hearings and working on resource consent processes;
 - b) Supported the development of Plan Changes; and
 - c) Involved in regional projects as a lead for UHCC developing the 2023 Housing and Business Assessment and the Future Development Strategy for the Wellington Region.
9. I confirm that I am continuing to abide by the Code of Conduct for Expert Witnesses set out in the Environment Court's Practice Note 2014, including the 2022 update to Part 5.

SCOPE OF REPLY

10. This reply follows the hearings held on 27 – 30 November 2023, and 3 April 2024. This right of reply is in five parts:
 - Part one relates to matters that traverse both PC49 and the variation,
 - Part two relates only to PC49,
 - Part three relates to the variation,

- Part four addresses matters raised in the reconvened hearing,
 - Part five responds to Minute #11 from the Hearings Panel, and
 - Part six includes recommended amendments in this right of reply.
11. Minutes #1 (dated 3 November 2023), #4 (dated 6 December 2023), #6 (dated 30 January 2024), #8 (dated 16 February 2024), #9 (dated 20 February 2024) and #11 (dated 23 April 2024) all reference, and raise matters that need to be addressed in, the Council’s right of reply.
 12. Minute #1 sets out the procedures for the hearing whilst some of the later minutes specifically identify further information that the Panel has directed be provided. All minutes can be found under the minutes tab of the following link:
<https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49>
 13. Minute #4 from the Panel directs that cultural information including all Treaty Settlements, Cultural Impact Assessments and Cultural Values Assessments is provided by 15 December 2023. This was undertaken and for ease of reference, this information can be found at <https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49> under “Information requested from the Panel”.
 14. Minute #4 also directs that a list is supplied to the Panel of all the requests that the Panel identified during the hearing, and the matters contained within this list are included in parts one to three of this right of reply.
 15. Additionally, Minute #4 contemplates directing ecological conferencing to take place. Following this minute, on 15 December 2023, the Panel received an email from the legal expert for Royal Forest and Bird expressing concern about the ecological conferencing. This is addressed in Minute #7 (dated 30 January 2024), where the Panel determines that in the first instance it will invite all submitters to the ecological conferencing and directs Council to provide feedback on the matters raised.
 16. Minute #6 requests information on sites that are part of PC49/Variation 1 as notified but where zoning has changed as a result of the Intensification Planning Instrument, which has now become operative. This is provided to the Panel in response to Minute #8.
 17. In addition, Minute #8 requests further detail on the information provided in response to Minute #6. The response to Minute #8 can be found using the link referenced in paragraph 12 of this right of reply.
 18. Minute #9 includes the information requested from submitters in Minute #4, as well as notice of a reconvened hearing to address the issue of the extent and values of any probable Significant Natural Area/s in respect of the Silverstream Spur and to traverse the arguments about any necessary assessments under the RPS. This reconvened hearing took place instead of the ecological conferencing. Minute #9 also included the directions:
 - to provide to all submitters and upload to the PC49/Variation 1 webpage the document Pinehaven Spur Report, and page 37 of the document entitled “Astrid – Field Notes 2018 – Guildford Swap Forest”. This information can be found at:
<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/pinehaven-spur-report-05-02-21.pdf> and

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/astrid-field-notes-2018-guildford-swap-forest.pdf>)

- that Council officers are directed to instruct expert ecological evidence to be provided to the hearing, and this can be found at <https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49> under “42a report - revised as per Minute #9”.
 - that Council officers review as necessary their Section 42a assessment in response to that evidence, which can be found at: <https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49><https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49> under “42a report - revised as per Minute #9”.
19. This right of reply addresses questions asked of me by the Panel during the hearing, and in the minutes referenced above, and where possible these questions have been grouped thematically.
 20. If I have not addressed a matter in this reply that was raised by a submitter throughout the hearings process, I have no further reply to add to what I have set out in the Council's evidence reports or evidence given at the hearing.
 21. This reply relates to the list of materials provided by submitters including expert evidence, legal submissions, submitter statements etc. These materials are available on the Council's PC49 webpage at this can be found at <https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49>
 22. Where I am recommending further amendments to PC49 and Variation 1, I include a section 32AA evaluation within the body of this right of reply, or within specified appendices.
 23. Appendices One and Two respectively contain the final recommended amendments to PC49 and Variation 1 provisions.
 24. Amendments to the notified version of PC49 and Variation 1 in response to submissions, amendments proposed in the section 42a reports, and amendments proposed in this right of reply are shown in accordance with the annotation conventions identified in Appendices One and Two of this right of reply. Other appendices are used for specific matters addressed in the body of this right of reply.
 25. For ease of reference, I have shown all recommended changes identified within the main body of this right of reply in green text as follows: deletions/insertions.
 26. Whilst I reference the Silverstream Spur Significant Natural Area in this right of reply, I do acknowledge that the panel may not agree with the recommended amendment in the revised section 42a report to amend the Silverstream Spur Natural Area to the Silverstream Spur Significant Natural Area. I have only used this naming convention in this right of reply for ease of reference.

PART 1 – MATTERS RELATING TO PC49 AND THE VARIATION

Corrections to PC49 and the Variation

27. The opening statement for PC49 noted that there are some matters of consistency that can be addressed by clause 16 or 20a as these are not covered in submissions, for example,
 - The term ‘Parks facilities’ which was used in the proposed PC49 provisions but is not the correct defined term, this should be ‘park and facilities management’. This proposed amendment does not change the intent of the provisions.
 - Changes to correct out of order provision numbers e.g. SUB-SAZ-R8 should have been SUB-SAZ-R10.
28. This will be separately addressed by Council.
29. I also note that Commissioner Muspratt identified that there may be an issue with the tracking on the blue highlighting, strike through and underlining in Appendix 2 of the section 42A report for the wider PC49.
30. The blue highlighting has been checked and I have been unable to find any errors. However, Appendices One and Two provide a complete picture of all proposed provisions as well as amendments made in the section 42a reports and this right of reply.
31. The revised section 42a report for Variation 1 had an error in the 32aa assessment. Paragraph 275 should have included reference to both discretionary and restricted discretionary activities in light of the recommendations at paragraph 265 of the revised section 42a report. No further changes are required to the section 32AA assessment.
32. Both plan change 49 and Variation 1 also include a Rule NOSZ-R15. Minor errors in numbering will be addressed by using either clause 16 or Clause 20 of Schedule 1 of the RMA.

Matters raised during the November 2023 hearing

National Policy Statement on Indigenous Biodiversity

Question 1

Please provide an assessment of PC49 and Variation 1 against the National Policy Statement for Indigenous Biodiversity. In particular, the panel asked for further consideration to be provided with regards to requirement 3.8(6) of the National Policy Statement for Indigenous Biodiversity (NPS-IB) noting that this has may have been triggered and whether this would mean consideration in this or a future plan change.

33. An extract from the legal advice was included as an Appendix to the revised section 42a report for Variation 1 and is attached at Appendix Three of this right of reply. It is also noted that the Silverstream Spur was assessed against the NPS-IB by the expert ecologist as part of the reconvened hearing. This expert ecologist advice can be found at:
<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/appendix-d-expert->

[ecological-evidence-0803.pdf](#) and is addressed in the revised Section 42A report for Variation 1.

Relationship to other plan changes and regional and national direction

Question 2

Noting that there are a number of moving parts that are relevant to this plan change please provide an explanation of the relationships between plan changes (Upper Hutt and Regional) and national direction.

34. I am answering this question in three parts, firstly district plan changes, secondly regional plan changes and lastly national policy direction.

District Plan changes

35. It was noted during the hearing that the IPI was notified after PC49 and that the IPI is now operative. Areas of cross over between the IPI and PC49 were addressed in response to minutes #6 and #8 available at:<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc49/maps-for-hearing-panel-for-pc49-minute-6.pdf>
36. Upper Hutt City Council is currently undertaking four plan changes. Plan Change (PC) 49 Open Spaces, Variation 1 to PC49 (Silverstream Spur), Plan Change 47 (Natural Hazards) and Plan Change 50 (Rural Review). Links to the provisions related to these plan changes are below:
- <https://www.upperhuttcity.com/files/assets/public/v/3/districtplan/pc50-rural/proposed-pc50-provisions-4.pdf>
<https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC47>
37. The interaction between PC49 and Variation 1 is relatively discreet. The Silverstream Spur did not originally form part of PC49 and rezoning this site required a variation to the plan change. The proposed provisions in Variation 1 involve adding to rather than amending the proposed provisions in PC49, and there is no overlap between PC49 and Variation 1 in terms of proposed zoning.
38. There is some interaction between PC49 and PC50, notably PC50 includes a definition of Sensitive Activities, which relates to the acoustic buffer zone proposed in PC50 for the Hutt Valley Clay Target Club. Further details on the proposed provisions in PC50 relevant to PC49 can be found in response to questions 3 and 27 of this right of reply.
39. The section 42a report for PC49 does propose rezoning part of the Wooster and Teasdale site from Natural Open Space to General Rural, however, this does not conflict with the proposed rezoning in PC50, and further detail is provided in response to Question 28 of this right of reply.
40. Firefighting provisions are also included in both PC49 and PC50. This is addressed in response to Questions 3, 9 and 10 of this right of reply.

41. There is an interaction between PC47 and PC49 in that some of the activities identified as permitted activities in the open space zones may also be subject to the Wellington Fault, Mangaroa Peatland and Slope Hazard overlays depending on where they are located. This means that, whilst they may be permitted in the open space zones, they could require a consent under other parts of the plan.
42. A copy of the relevant provisions for PC47 is provided at Appendix Four of this right of reply. Maps are also provided in Appendix Four for ease of reference, and for the Panel to identify areas where there may be cross over between PC49 and PC47. It is noted, however, that it is possible for activities identified as hazard sensitive and potentially hazard sensitive to avoid these hazard overlays in most open space zones.
43. The Wooster and Teasdale site is affected by the Wellington fault overlay and slope hazard overlay, but not the area that is proposed for rezoning as part of the section 42a report for PC49. Whilst not part of PC47, I also note that the part of the Wooster and Teasdale site proposed for rezoning is in the 1 in 100-year flood extent overlay.
44. The hearing for PC47 was held on 22 April 2024, with only 5 submitters attending. Many matters of concern, particularly for slope hazard, were addressed prior to the hearing with the development of amended slope hazard mapping to that shown in the notified maps.

Regional Plan Changes

45. There are two regional plan changes of note, Plan Change 1 to the Regional Policy Statement for the Wellington Region and Plan Change 1 to the Natural Resources Plan for the Wellington Region.
46. An analysis was provided against Plan Change 1 to the Regional Policy Statement in the Section 42a reports for PC49 and Variation 1. For ease of reference, these are at paragraphs 39 to 42 of the section 42a report for PC49 and paragraphs 60 to 67 of the revised section 42a report for Variation 1.
47. My opinion remains the same on Plan Change 1 to the Regional Policy Statement in that little weight should be given to this plan change. The last hearing was on 15 April 2024 and no decisions have yet been made. Many submitters have expressed concern that the provisions, as notified, went beyond what could be achieved in respect of clauses 30 and 31 of the RMA.
48. However, if the Panel did wish to consider this further, my opinion is that the most relevant provisions are:
 - Objective CC.4 and associated policies CC.7 and CC.12
 - Objective 12 and associated policies 15, 40, 41
 - Objective 16 and associated policies 23 and 24
 - Proposed objective 16B and associated policy IE.1
49. Plan Change 1 to the Regional Policy Statement also includes objectives and policies on Natural Hazards, these are most relevant to PC47. PC47 is largely consistent with the approach in Plan Change 1 to the Regional Policy Statement. The relationship between PC49 and PC47 is described in paragraph 40 above.

50. Noting the Panels question on the Future Development Strategy for the Wellington Region at page 25 of this right of reply, this was not included in Plan Change 1 to the Regional Policy Statement as notified. Instead, it refers to the Wellington Regional Growth Framework, which has now been superseded by the Future Development Strategy for the Wellington Region. Notwithstanding this, the Panel may still be interested in Objectives 22 and 22A and associated policies 55, 56 Fw.3, policy 42.
51. Plan Change 1 to the Regional Policy Statement also included objectives and policies on Te Mana o Te Wai and freshwater management, including Objective 12 and associated policies.
52. The coalition government have signalled their intention to replace the National Policy Statement for Freshwater Management 2020. As part of the Resource Management Reform an amendment bill is expected to be introduced to Parliament in May.
53. This is expected to make it clear that resource consent applicants no longer need to demonstrate their proposed activities follow the Te Mana o te Wai hierarchy of obligations.
54. Whilst not a regional plan change, I also note that the revised Section 42a report for Variation 1 provides an update on the Operative Regional Plan for the Wellington Region at paragraphs 57 to 59.
55. Plan Change 1 to the Natural Resources Plan includes implementation of recommendations from Te Awarua-o-Porirua and Te Whanganui-a-Tara Implementation Programmes, and other regulatory amendments to the Natural Resources Plan. Of relevance to Upper Hutt is the Te Whanganui-a-Tara Implementation Programme. This is considered further in response to Question 34 of this right of reply.
56. Plan Change 1 to the Natural Resources Plan was notified on 30 October 2022 and focusses on the management of key activities as they relate to water quality and ecological health.
57. Plan Change 1 to the Natural Resources Plan has not reached hearings stage yet and so in my opinion limited weight should be given to this plan change. However, the Panel may wish to consider the following matters which may be of relevance to PC49 and Variation 1:
- Plan change 1 proposes:
 - provisions that relate to plantation forestry on high and highest erosion risk land, which may include some Natural Open Space Zones;
 - Limitations to earthworks
 - Provisions relating to the replanting of plantation forests
 - Unplanned greenfield developments, which the Plan Change 1 to the Natural Resources Plan is proposing is a prohibited activity
58. Proposed Plan Change 1 to the Natural Resources Plan also includes amendments to provisions on new sites with significant biodiversity values.
59. I note that the amendments to PC1-NRP means that some Objectives in the NRP no longer apply to the Whaitua Te Whanganui-a-Tara. The PC1-NRP includes new objectives that may be relevant to PC49 including Objectives WH.O1, WH.O2, WH.O4, WH.O6, WH.O8 and WH.O9.

60. Policies that may be relevant, particularly to Variation 1 are amendments to Policies 30, 45, WH.P1, WH.P2, WH.P4, WH.P7, WH.P9, WH.P10, WH.P14, WH.P16, WH.P26, WH.P27, WH.P28, WH.P29 and WH.P30.
61. Rules that may be relevant are WH.R2, WH.R3, WH.R5, WH.R9, WH.R11, WH.R13, WH.R17, WH.R18, WH.R19, WH.R20, WH.R21, WH.R22, WH.R23, WH.R24 and WH.R25.
62. The use of the beds of lakes and rivers are a regional council responsibility and so no provisions are included in the District Plan to address this matter.
63. WH.R20 may be of interest to the Panel since this rule proposes to make plantation forestry a controlled activity under Plan Change 1 to the Natural Resources Plan. In comparison, PC49 proposes that this is a permitted activity within regional parks. There may be scope in the submission (23) from Forest and Bird to address this inconsistency. However, as identified in paragraph 56 above, my opinion is that the current status of Plan Change 1 to the Natural Resources Plan means that provisions contained within it should be given little weight.
64. Rule WH.R22 also proposes that plantation forestry is a prohibited activity on land of highest erosion risk. PC47 identifies areas of the Natural Open Space zones that are also subject to a slope hazard overlay.
65. The Southern Growth Area in Plan Change 1 to the Natural Resources Plan as notified is also an unplanned greenfield area and rule WH.R13 makes stormwater from unplanned greenfield development a prohibited activity.

[National Policy / Direction](#)

66. The section 42a reports identify several new national policy documents that have been released since PC49 was notified.
67. With regards to the National Policy Statement for Highly Productive Land, my view has not changed since the section 42a reports in that this has little relevance in respect of PC49 and Variation 1. Very little of the land zoned for all Open Space zones is Land Use Capability 1, 2 or 3.
68. This is addressed in paragraphs 31 to 34 of the section 42a report for PC49 which provides an assessment against the NPS-HPL and paragraphs 47 and 48 of the revised section 42a report for Variation.
69. Primary production is a non-complying activity in the Open Space zones, except that it is permitted in the regional parks. However, the permitted activity in regional parks is limited to plantation forestry, stock grazing, bee keeping, and quarrying activities where the works are for the management of park roads or tracks under policy NOSZ-P5 and rule NOSZ-R12.
70. I note that the coalition government has signalled a review of the NPS-HPL, largely to reduce consenting barriers for infrastructure, housing and primary production, and consider how it could enable more greenfield development. No more information is currently available to support any further commentary in this right of reply.

71. Turning to the National Policy Statement for Indigenous Biodiversity, the section 42a reports for PC49 and Variation 1 note that the natural environment comprises a key component of the Natural Open Space Zone.
72. Council will initiate a plan change to give full effect to the NPS-IB, however, I note that the coalition government has signalled a review of the NPS-IB. In particular, for SNA's this will likely include suspending the NPS-IB requirement for councils to identify new Significant Natural Areas (SNAs) for three years, as well as reviewing the management of existing SNA's.
73. Only one SNA has been identified in Variation 1 and further assessment was provided on this in the revised section 42a report for Variation 1 at paragraphs 52 to 56. This right of reply also further assesses the NPS-IB in response to Questions 30 and 31 of this right of reply.
74. The National Adaptation Plan is less directive but Objectives NE1, NE2, NE3 and associated actions may be of some relevance to the PC49 and Variation 1.
75. The Fast-track approvals bill enables a fast-track consenting process for housing and infrastructure projects. The process for applying for a scheme to be identified in a list of projects that will be automatically fast-tracked when the bill is passed into law has closed, but others can also apply later to be considered by an expert panel.
76. It is as yet unclear what this will mean for Upper Hutt, but for the purposes of this plan change this is unlikely to be a matter that needs to be considered by the Panel, since this legislation has not yet passed and would sit outside the Schedule 1 process.
77. I note that there are other signals from the government in regard to Resource Management Reform including making Medium Density Residential Standards optional, amendments to the National Policy Statement for Freshwater Management beyond the hierarchy of obligations, and wider Resource Management reform. However, there is no further detail on these parts of the reform.
78. With regards to the National Environmental Standards for Commercial Forestry (NES-CF) this is relevant to PC49 and Variation 1. An assessment is provided in response to questions 22 of this right of reply, as this was asked at the reconvened hearing.

Question 3

Please clarify existing relevant rule framework across the plan and how they interact with PC49, including information on plan change 50 noise standards.

79. This is provided in response to Questions 9, 26, 27 and 32 and in Appendices Five and Six of this right of reply. Particular focus has been on the provisions in respect of firefighting, the Royal Wellington Golf Club, the Hutt Valley Clay Target Club and the Silverstream Spur. No further matters of concern have been identified and the open space zone provisions in PC49 largely replace those in the ODP to have consistency with the National Planning Standards.
80. One additional area to note is that the access standards for the general residential zone and general rural zone applies to both subdivision and other development within these zones e.g standards SUB-RES-S2, SUB-RUR-S2, GRUZ-S1 and GRZ-S1. However, in the open space zone it is proposed that this just applies at subdivision stage in standard SUB-OSRZ-S1.

81. There may be situations where a change of access occurs in the open space zone that is not associated with a subdivision, but I am not aware of scope of submissions to address this inconsistency. Therefore, this may need to be addressed in a future plan change.

Response to matters raised by submitters

82. I have not identified any matters raised by submitters that provided evidence at the hearing that relates to both PC49 and the Variation.

PART TWO – MATTERS RELATED TO THE PC49 WIDER PLAN CHANGE

Treaty Settlements

Question 4

Please provide any information on Treaty of Waitangi claim from Ngāti Ira in the Hutt Valley.

83. All information Council holds on Treaty Settlements was provided on 15 December 2023. It can be found at <https://www.upperhuttcity.com/Home/Tab/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49> under the 'Information requested from the Panel' for ease of reference.

Question 5

Whakataka Pa – the panel requested that Council work with Ngāti Ira and Taranaki Whānui with regard to this site of significance to Māori and look at the principles associated with these.

84. Submission 93 from Ngāti Toa raises a similar matter and Council intends to initiate a plan change on Sites of Significance to Māori, and Council will work closely with iwi on this plan change.

Car parking standards

Question 8

Does the 1,000 car parks requirement in rule OSZ-S17 relate to all open space zones?

85. Rule OSZ-S17 applies specifically to the Wellington Speedway, however, the NPS-UD required the removal of car park provisions requiring a minimum number of car parks to be provided for a particular development, land use or activity.
86. This is removed in the IPI provisions and the PC49 provisions as notified and was an annotation error in Appendix 2 of the section 42a report. Corrected annotations are provided at Appendix One of this right of reply.

Proposed Firefighting Provisions

Question 9

Please reconsider Fire and Emergency New Zealand (FENZ) submission again to see if the provisions recommended in the section 42A report can be more specific / clear in light of the FENZ submission. The panel is particularly interested in how provisions should address areas that are not reticulated and where there is a lack of water pressure.

87. I note that the submission from Fire and Emergency New Zealand (24) sought the following standard be included in all open space zones:

“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.”

88. The section 42a report for the wider Plan Change 49 recommends simplifying the relief sought above to read:

“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”.

89. The purpose of SNZ PAS 4509:2008 is to set out what constitutes a sufficient minimum supply of water pressure and volume for firefighting in structures in urban fire districts. The Code of Practice further notes:

“The Fire Service recommends the installation of automatic fire detection devices such as smoke detection systems and fire protection systems such as sprinklers in buildings (irrespective of the water supply) to provide maximum protection for life and property.

Fire districts may have a range of water supply systems such as a fully reticulated water supply system (an urban water supply area), a rural water supply system that feeds a supply tank (a rural water supply area), or a stand-alone tank supply using rainwater or a local well or bore for maintaining its contents.

Many areas outside fire districts will normally only have a rural water supply system or a stand-alone tank supply (although there may be some private reticulated water supply systems).

Where this code identifies firefighting water supply requirements for any of the three water supply systems above, these requirements can be used to provide advice for similar systems outside fire districts, that is, in rural areas.

In rural areas there may be water supply systems without firefighting capability. In many cases these systems are not sufficient for fire sprinkler systems unless stand-alone water supplies are provided. These are matters to be considered at the design stage of the sprinkler system.

In rural areas, the effectiveness of a water supply for firefighting is affected by the time and distance from a fire station, the fire loading in the structure, the speed of fire development, ready access to a sufficient quantity of water, and the seasonal sustainability of the water supply. Because structures remote from a fire station are significantly more at risk from fire outbreak, the Fire Service strongly recommends that sprinklers are installed in all structures (and specifically houses) sited more than a 10-minute response time from a fire station.”

90. Following the submission on PC49 from Fire and Emergency New Zealand, Plan Change 50 – Rural Review was notified and included the following proposed provisions for all rural zones:

Water supply and firefighting sprinkler system for residential units

- a. Each residential unit that is not connected to Council’s reticulated water supply must have the following installed:
- b. a self-sufficient potable water supply with a minimum volume of 38,000L; and
- c. a domestic fire sprinkler system in accordance with NZS 4541:2013 that is connected to a firefighting water supply in accordance with the New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

91. Council received a submission on PC50 from FENZ supporting the above but also requesting changing the standard from NZS 4541:2013 to NZS 4541:2020 and including a new standard as follows:

All new buildings (other than residential units not connected to Council’s reticulated water supply and development must be provided with a firefighting water supply in accordance with New Zealand Fire Service Firefighting Water Supplies Code of Practice SNZ PAS 4509:2008.

92. The Senior Fire Engineer at the Building Performance and Engineering team at the Ministry of Business, Innovation & Employment also made a submission (39) that:

- NZS 4541 is more applicable to commercial buildings.
- NZS 4541:2013 is superseded, the newest edition is NZS 4541:2020.
- NZS4517:2010 is more applicable to residential buildings.
- Unless the intent is to have a firefighting water supply in addition to a sprinkler system, either sprinkler standard (NZS4541 or NZS4517) contains requirements for the water supply for that system.

93. There is the question of whether there should be consistency between the two plan changes and how this should be managed, given that there is the potential for commercial and residential activities in the open space zones. In terms of PC49 there is no scope within the FENZ submission to include standards other than SNZ PAS 4509:2008.

Therefore, the Panel can either:

- accept the recommendation in the section 42A report, amend the provisions recommended in the section 42a report to provide further clarity;
- accept the amendments in the section 42a report and defer consistency between open space and rural zone provisions in a future plan change; or
- reject the submission and defer the inclusion of firefighting standards to a future plan change (noting that this may leave a gap).

94. If the Panel does wish to provide further clarity for plan users, the provisions could either include those requested in the FENZ submission or an alternative could be the following:

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

Note: 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. Further information on 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 SNZ PAS 4509:2008.

Question 10

In respect of the above the firefighting standards, the panel has also asked for options for to reference standards e.g. incorporating by reference, identifying in a code of practice as a means of compliance, or including relevant standards in provisions. It is also noted that some New Zealand Standards for firefighting have changed between the report being produced and the hearing. Consideration should therefore be given whether there is scope within the submission to refer to these new standards, or whether clause 16 may be an option if the intent of the New Zealand Standards has not changed from the previous version.

95. As noted above, there is no change to SNZ PAS 4509:2008 only an update to NZS 4541:2013, there is also no scope in submissions to include standards other than SNZ PAS 4509:2008 in PC49.
96. I would also consider that clause 16 is not an option as any amendments would be more than minor. My assessment of the other options is included in the table below:

Option	Assessment
Incorporating by reference.	No scope of submissions beyond including SNZ PAS 4509:2008.
Using a Code of Practice as a means of compliance without incorporating the document by reference.	This option has less regulatory support than option 1 and could lead to a lack of clarity and inconsistencies in decision making.
Including standards in provisions.	The detail in SNZ PAS 4509: 2008 are too lengthy and detailed to be included in provisions.

Question 11

It is noted by the panel that 27 Blenheim Street is proposed to be rezoned to mixed use in Intensification Planning Instrument (IPI), this needs to be considered and feedback provided to the panel on this site and any other relevant site, including on the status of the IPI, so that there is no 'double dipping between' IPI and PC49.

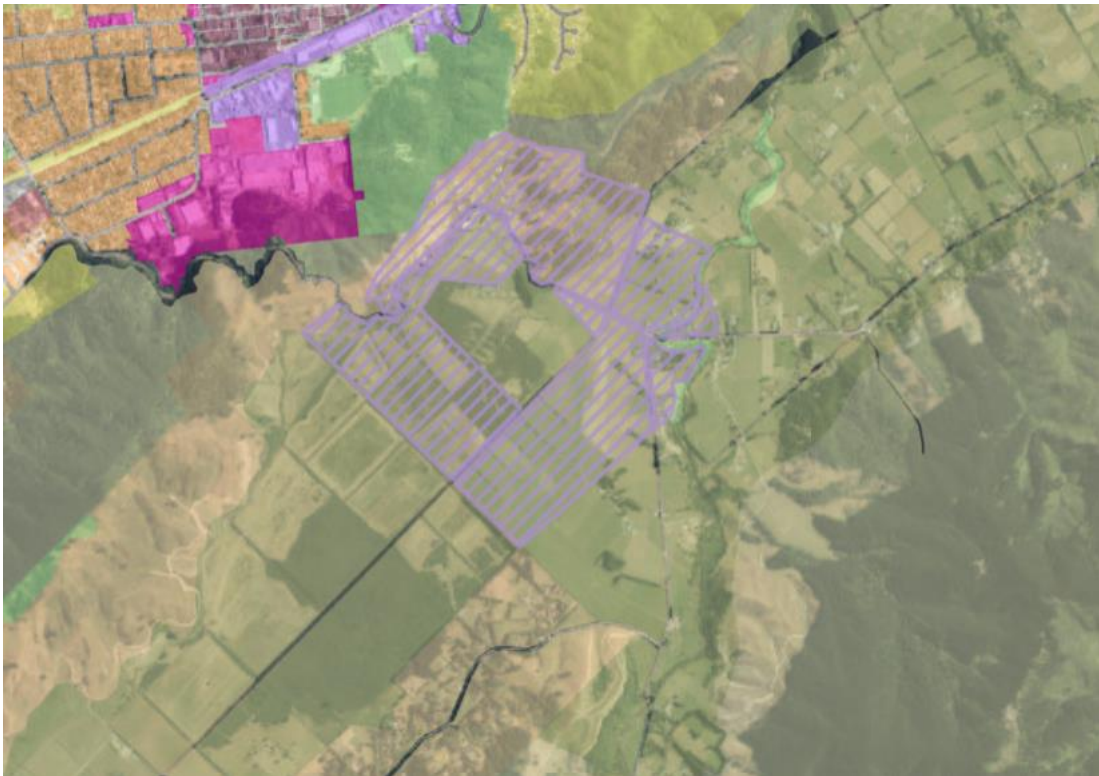
97. This was provided with the Council's response to Minute #6.

Plan Change 50 Noise Provisions

Question 12

The panel has requested further information on plan change 50 noise standards for residential buildings, in particular the acoustic buffer zone.

98. The acoustic buffer zone is shown in purple hatching below:



99. The relevant noise provisions for PC50 relating to the acoustic overlay for the Clay Target Club are:

New Definition of Sensitive Activities

Sensitive activities means activities which are more sensitive to noise, dust, spray, residue, odour or visual effects of nearby activities including:

- a. residential activities;
- b. visitor accommodation;
- c. educational facilities;
- d. medical facilities

NOISE-P4

Sensitive activities in the Clay Target Club acoustic overlay minimise noise effects on sensitive activities by requiring new buildings for sensitive activities within the Clay Target Club acoustic overlay to be designed and constructed to achieve appropriate internal noise levels.

NOISE-S7

In addition to the underlying zone standards, any new sensitive activity, or extension to a residential unit containing habitable rooms, within the Clay Target Club acoustic overlay must meet the following standards:

- Designed and constructed so that noise from activities does not exceed internal sound design levels being:
 - a. 35 dB Laeq(1h) for bedrooms; and
 - b. 40 dB Laeq(1h) in other habitable rooms.
- Provide a ventilation system that meets the following standards:
 - a. mechanical ventilation that satisfies Clause G4 of the New Zealand Building Code;
 - b. achieves a minimum of 7.5 litres of air per second per person;
 - c. a noise output not exceeding 35 dB Laeq(30s) at night-time in bedrooms when measured 1m away from any grille or diffuser; and
 - d. a noise output not exceeding 40 dB Laeq(30s) in any other space when measured 1m away from any grille or diffuser.

NOISE-R4

Any new sensitive activity, or extension to a residential unit containing habitable rooms, within the Clay Target Club Acoustic overlay which does not comply with NOISE-S7 Council will restrict its discretion to, and may impose conditions on:

1. How effects associated with the specific breach will be managed.
 2. How residential amenity will be provided within habitable rooms.
 3. Any built form restrictions required to achieve the standard.
 4. Provision of any supplementary ventilation measures and its ability to operate without increased exposure to potential noise effects.
 5. Whether there is a reduced risk of noise from the potential source(s).
 6. Any private legal arrangements to manage the potential noise impact on the future residents.
 7. Topographical features that may further reduce the potential for noise.
100. More information on the overlay is provided as a separate part in the section 32 assessment provided in the link below:

<https://www.upperhuttcity.com/files/assets/public/v/1/districtplan/pc50-rural/s32-evaluations.pdf>

[Response to matters raised by submitters](#)

101. I have not identified any matters raised by submitters during the hearing that I wish to provide further recommendations on at this stage. However, I have provided some further commentary in Part Five of this right of reply in relation to the Royal Wellington Golf Club and the Hutt Valley Clay Target Club.

Recommended amendments

102. I have no further recommended amendments on PC49 following the hearing on PC49.

PART THREE – MATTERS RELATED TO VARIATION 1

Infrastructure Acceleration Fund

Question 13

It was noted at the hearing that the Southern Growth Area had applied to the Infrastructure Acceleration Fund. Officers were asked to provide the panel with dates for IAF discussions.

103. Council met on 17 August 2021 to consider the Expressions of Interest Application for the Infrastructure Acceleration Fund. Expressions of Interest closed on 20 August 2021. Following this Kāinga Ora shortlisted 80 applications. These 80 applicants were invited to provide further information by December 2022 and the Southern Growth Area was one of the applications that were shortlisted. In April 2022, 35 of those 80 applications were invited to enter the final stage, the Southern Growth Area was not one of them.

Road on Silverstream Spur

Question 14

Please provide information about building a road on a park or reserve under section 138 of the local Government Act 2004, the processes needed to build such a road, alternatives available and legal advice about road stopping and road opening processes and alternative options such as designations.

104. Legal advice has been obtained and this is provided at Appendix Three to this right of reply.

Question 15

At the original hearing the panel requested that the matters of discretion missing from amendments to be addressed and provided in right of reply for rules NOSZ-R22 and NOSZ-R15(2),

105. The matters of discretion for Rule NOSZ-R22 were addressed in the revised section 42a report, with recommendations for the following matters to be included:

Council shall restrict its discretion to the following matters:

1. Landscaping.
 2. Earthworks and accidental discovery.
 3. Protection of any special amenity feature.
 4. Effects on indigenous biodiversity in the identified Silverstream Spur Significant Natural Area.
 5. Tangata whenua values
 6. Effects on ecological values.
 7. Measures to avoid, remedy or mitigate potential adverse effects.
106. With respect to rule NOSZ-R15(2) as notified the hearing officers noted that other rules across the plan may also be relevant. As an example, earthworks would be needed for a road and

would need a consent under other parts of the plan. This is considered further in response to Question 32 in this right of reply.

107. The revised section 42a report recommends that the activity status of the road in NOSZ-R15 is amended from being a controlled activity to a discretionary activity, which does not include any matters of discretion. My opinion has not changed on this matter.
108. If the Panel were to consider that a restricted discretionary activity was to be more appropriate for the road, I would recommend the following matters of discretion:
1. landscaping
 2. road alignment location and design
 3. provision of and effects on network utilities or services
 4. earthworks effects and accidental discovery
 5. financial contributions
 6. traffic and transportation effects
 7. hydraulic neutrality
 8. effects on indigenous biodiversity
 9. effects on amenity values
 10. compliance with the Upper Hutt City Council Code of Practice for Civil Engineering Works.
109. These matters are consistent with district wide policies in the Operative District Plan, and generally consistent with matters of control in the notified version of Variation 1 and will address environmental effects associated with the road. Similar to a discretionary activity, this would provide a consenting pathway for the road but recognises the significant effects that a road could have on the Silverstream Spur Significant Natural Area.

Question 16

At the hearing the panel asked officers to further clarify recommended amendments to remove reference to the Southern Growth Area in Policy NOSZ-P6 as they could not see this in the section 42A report. The panel has asked if the section 42A moves away from intent of section 32 in respect of this recommended amendment? The panel has asked for officers to clarify what this would mean if the panel adopted the recommended amendments in the section 42A report e.g. would it mean that this has gone a long way from the original proposal or does it still allow it.

110. This was addressed in paragraph 263 of the revised section 42a report. I do not consider that this would move away from the intent of the provisions. The policy as proposed in the section 42a report still enables a transport corridor and 'future development opportunities' could still enable infrastructure to support the Southern Growth Area.
111. Paragraph 10.3.2 of the section 32 assessment also identifies that policy NOSZ-P6 focusses on the provision of infrastructure including a transport corridor which would provide access to the Silverstream Spur and to the Southern Growth Area.

Question 17

Please provide a copy of the 2014 Beca Report referred to by Silverstream Railway.

112. This has been provided and was posted on the Council website on 15 December 2023 in accordance with Minute #4.

For ease of reference the link to this is provided here:

<https://www.upperhuttcity.com/Home/Tabs/Council/Your-Council/Plans-policies-bylaws-and-reports/District-Plan/PC49> and the information is provided under the “Information Requested from the Panel” tab.

Scope of Plan Change 49

Question 18

Please provide a copy of the Buddle Findlay 2022 legal advice about scope of Plan Change 49 in relation to the Silverstream Spur. Referred to in Mr Pattinsons evidence.

113. This is provided in Appendix Seven of this right of reply.

Information from other Council processes that may be relevant to Variation 1

Question 19

Officers were asked to identify and provide any papers to Council by the other teams in respect of the Silverstream Spur.

114. I am aware of one report, from Council Parks and Reserves Manager to the Policy Committee on 21 February 2024, which is in the link below. The decision was that Council defers any action on the Silverstream Spur until 2027, as part of the next review of the Long-Term Plan. <https://www.upperhuttcity.com/files/assets/public/v/1/yourcouncil/meetings/2024/cycle-1/policy-agenda-20240221.pdf>

Comparison of operative and notified provisions

Question 20

Noting that the current zoning is a split zoning, officers have been asked to provide information on what the permitted baseline would look like in terms of what could be expected as of right from roading and housing etc.

115. A comparison of the provisions is shown at Appendix Six and is also addressed in response to Question 32 of this right of reply. These do not include the subdivision rules and standards as these are not a permitted activity.

Future Development Strategy

Question 21

Please provide information on Future Development Strategy for the Wellington Region and 2023 Housing and Business Assessment in particular relation to Policy 3.8 of the NPS-UD.

116. Policy 3.8 of the National Policy Statement on Urban Development states:

3.8 Unanticipated or out-of-sequence developments

1. This clause applies to a plan change that provides significant development capacity that is not otherwise enabled in a plan or is not in sequence with planned land release.
2. Every local authority must have particular regard to the development capacity provided by the plan change if that development capacity:
 - a) would contribute to a well-functioning urban environment; and
 - b) is well-connected along transport corridors; and
 - c) meets the criteria set under subclause (3).
3. Every regional council must include criteria in its regional policy statement for determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity.

117. Policy 8 states:

Policy 8: Local authority decisions affecting urban environments are responsive to plan changes that would add significantly to development capacity and contribute to well-functioning urban environments, even if the development capacity is:

- a) unanticipated by RMA planning documents; or
- b) out-of-sequence with planned land release.

118. Council has identified, through the 2023 Housing and Business Assessment, the need for 7,931 new homes between 2021 and 2051, and there is realisable capacity of 18,461 dwellings including greenfield development and uplift in density enabled by the Intensification Planning Instrument.

119. The 2023 Housing and Business Assessment did not specifically include the Southern Growth Area as a greenfield site for assessment, and the Future Development Strategy for the Wellington Region did not identify the Southern Growth Area as a priority site.

120. Therefore, the Southern Growth Area could be determined to be an unanticipated or out of sequence development to which clause 3.8 of the National Policy Statement on Urban Development applies.

121. However, I note that PC49 did not include provisions for the development itself, rather it provides a consenting pathway for transport corridor across the Spur.

122. I am not convinced that the Panel would need to turn its mind clause 3.8 of the NPS-UD. However, if the Panel does not agree with this, I note that Proposed Plan Change 1 to the Regional Policy Statement for the Wellington Region, includes policy UD.3 to give effect to clause 3.8(3) of the National Policy Statement on Urban Development.
123. Given that hearings finished on Plan Change 1 to the Regional Policy Statement in April 2024, it is unlikely that this will be made operative before a decision is made on PC49. Therefore, the criteria for “determining what plan changes will be treated, for the purpose of implementing Policy 8, as adding significantly to development capacity” is not yet operative.
124. I have included policy UD.3 of Plan Change to the Regional Policy Statement below for completeness, as well as a brief assessment against that policy in red text. I also identified in response to Question 2 of this right of reply that Proposed Plan Change 1 to the Natural Resources Plan for the Wellington Region addresses unplanned greenfield development.
125. Policy UD.3: Responsive planning to developments that provide for significant development capacity – consideration:

When considering a change of a district plan for a development in accordance with clause (d) of Policy 55, particular regard shall be given to whether the following criteria is met:

(a) the location, design and layout of the proposal:

- (i) contributes to establishing or maintaining the characteristics and qualities of a well-functioning urban environment identified in Policy 55(a)(ii) and Objective 22, (In providing for appropriate urban expansion policy 55(a)(ii) refers to avoiding inappropriate subdivision, use and development at risk from natural hazards, and protecting indigenous ecosystems and habitats with significant indigenous biodiversity values as identified by Policy 23, which are relevant to the Silverstream Spur),
- (ii) is well-connected to the existing or planned urban area, particularly if it is located along existing or planned transport corridors (the Southern Growth Area is not along existing or planned transport corridors),
- (iii) for housing will apply a relevant residential zone or other urban zone that provides for high density development or medium density residential development, (There is currently no proposal for the Southern Growth Area in PC50, however, a submission has been received on PC50 to rezone the sites).

(b) the proposal makes a significant contribution to meeting a need identified in the 2023 Housing and Business Development Capacity Assessment, or a shortage identified in monitoring for:

- (i) a variety of housing that meets the regional, district, or local shortages of housing in relation to the particular type, size, or format,
- (ii) business space or land of a particular size or locational type, or
- (iii) community, cultural, health, or educational facilities, and
- (iv) the proposal contributes to housing affordability through a general increase in supply or through providing non-market housing, and

No shortage has been identified so far and the 2023 Housing and Business Assessment shows more than sufficient capacity to meet need.

(c) when considering the significance of the proposal's contribution to a matter in (b), this means that the proposal's contribution:

- (i) is of high yield relative to either the forecast demand or the identified shortfall,
- (ii) will be realised in a timely (i.e., rapid) manner,
- (iii) is likely to be taken up, and
- (iv) will facilitate a net increase in district-wide up-take in the short to medium term.

(d) required development infrastructure can be provided effectively and efficiently for the proposal, and without material impact on planned development infrastructure provision to, or reduction in development infrastructure capacity available for, other feasible, likely to be realised developments, in the short-medium term. (Could be provided but further assessment would be needed on both the anticipated infrastructure to be provided as part of the development and the impacts on the existing infrastructure networks).

Response to matters raised in submissions

- 126. Most of the evidence presented by submitters related to the nature and extent of the area of significant indigenous biodiversity, the proposed transport corridor, the need for the Southern Growth Area and the natural open space zoning.
- 127. Evidence presented by submitters at the hearing represented a range of views with many submitters opposing the road and supporting the proposed rezoning to Natural Open Space.
- 128. The original submission from the Guildford Timber Company sought retention of the general residential part of the Silverstream Spur. However, whilst they still disagreed with the proposed zoning in PC49, the evidence provided at the hearing sought to focus on preserving access to the future Southern Growth Area.
- 129. Having heard evidence from submitters, I do not recommend any further amendments to the zoning proposed in the notified version of Variation 1 and remain of the opinion that the whole of the Silverstream Spur should remain Natural Open Space.
- 130. The provisions relating to the transport corridor are addressed in response to Questions 14, 15, 16 20, 23, 30 and 32 of this right of reply.
- 131. Submitters provided evidence on the nature and extent of the significant area of indigenous biodiversity. Again, views ranged from reducing the extent through to increasing the extent and submitters provided extensive evidence supporting these opposing views, including expert evidence from the Guildford Timber Company.
- 132. As identified in paragraph 18 above, the hearing was reconvened to consider further the nature and extent of the significant area of indigenous biodiversity, and this is addressed further in Part Five below.

133. Expert evidence was presented from Forest and Bird and the Guildford Timber company on the need for the Southern Growth Area. Given the evidence presented, the Panel asked for further information on the Future Development Strategy for the Wellington Region and the 2023 Housing and Business Assessment. This is addressed in response to Question 21 of this right of reply.
134. I note that in paragraph 5.4.3 of his expert evidence Mr Foy considers that the 2023 Housing and Business Assessment contains a key error in relation to the assessment of standalone dwelling capacity, and does not take into account several supply constraints, meaning the HBA significantly overstates that capacity.
135. The methodology is provided in the link below and in my opinion this methodology is robust and the 2023 Housing and Business Assessment identifies that, in keeping with dwelling demand projections, standalone developments have a higher realisation rate than other typologies and make up a large proportion of the type of dwellings which are likely to be built in Upper Hutt over the next 30 years.

<https://wrlc.org.nz/wp-content/uploads/2023/10/Upper-Hutt-Appendix-Residential-Feasible-Capacity-Modelling.pdf>.

136. At paragraph 5.4.5 Mr. Foy raises concern over recent trends in Upper Hutt stating that it is “a popular destination for first home buyers and those seeking affordable dwellings in Wellington, particularly among migrant groups, first home buyers, and the elderly”. The 2023 Housing and Business Assessment identifies that since this peak at the end of 2021, house prices, sales and first home buyer participation in the market have dropped considerably, which is likely due to external factors including interest rate rises, increasing inflation and the cost-of-living crisis.
137. At paragraph 5.4.4 of his evidence Mr. Foy refers to the intention to scrap Let’s Get Wellington Moving. I note that the two sections of LGWM will continue by both the new government and Wellington City Council and this capacity will likely be able to be taken up by Wellington City.

[Recommended Amendments](#)

138. There are no further recommended amendments in relation to this part of the right of reply.

PART FOUR – TOPICS RELATED TO THE RECONVENED HEARING

Higher Order Documents

Question 22

Please provide an assessment against the National Environment Standards for Commercial Forestry.

139. The section 32 assessment identifies that “due to the specific nature of open spaces the majority of the National Policy Statement and National Environmental Standards controls do not apply”. The National Environmental Standards for Plantation Forestry which came into force on 1 May 2018 were superseded by the National Environmental Standards for Commercial Forestry Amendment Bill which came into force on 3 November 2023.
140. The forest on the Silverstream Spur has not been managed as a commercial forest and the National Environmental Standards for Plantation Forestry primarily manages forests planted for harvest. The amendments in the National Environmental Standards for Commercial Forestry applies to both exotic continuous-cover forests (carbon forests) that are deliberately established for commercial purposes.
141. Therefore, in my opinion, the National Environmental Standards for Commercial Forestry do not apply to the Silverstream Spur.

Transport Corridor

Question 23

Please provide information on nuancing around road and rule framework, including whether different types of road have different levels of assessment.

142. Further detail on the rule framework is provided in response to Question 32 of this right of reply.
143. In general, the provisions of the Operative District Plan do not directly include different levels of assessment for different types of roads. This is with the exception for provisions that include the requirement to comply with the Code of Practice for Engineering Standards as a matter over which Council restricts its control or discretion.
144. The Code of Practice for Engineering Standards includes different geometric design requirements for roads serving different scales and types of development. A link to the Code of Practice for Engineering Standards is provided in response to question 30 of this right of reply.
145. I note that the provisions for Variation 1 as notified did include specific design requirements including a carriageway width in standard NOSZ-S4, which are largely consistent with the Code of Practice for Engineering Standards. This is with the possible exception of the footpath requirement, where the Code of Practice requirements may be more onerous.

146. Standard NOSZ-S4 was recommended for deletion, as a consequential amendment to recommending changing the activity status of Rule NOSZ-R15 from a controlled to a restricted discretionary activity, in the revised section 42a report for Variation 1.

Mana Whenua Values

Question 24

The panel note the lack of Mana Whenua values assessment and considerations around this, including within context of rolling plan review and national direction. Please provide further commentary.

147. All documents held by Council were provided on 15 December 2023. It was also raised during the reconvened hearing that there was little to no iwi assessment undertaken for the Silverstream Spur in respect of Policy 23 of the Regional Policy Statement.
148. As identified above, Council has signalled its intention to initiate plan changes to identify Sites of Significance to Māori. As part of this process Council will be developing its evidence base, which will be used to develop provisions. It is expected that this will be undertaken in collaboration with Mana Whenua.

Recommended Amendments

149. Recommended amendments relating to the transport corridor in this right of reply are identified at the end of part five and in part six and Appendix Two.

PART FIVE QUESTIONS IDENTIFIED IN MINUTE #11

Extent of the Significant Natural Area

Question 25

The Panel would like the Right of Reply to contain maps as follows:

- a. a clear map showing the boundaries of the SNA in V1 as notified.

150. This is shown in map one below:

Map one – SNA as notified



151. Following the receipt of ecological evidence, the revised section 42a report recommended removal of the section identified in yellow and retaining the area shown in orange in map two below:

Map two – extent of SNA identified in the revised section 42a report



- b. a separate clear map showing the Section 42a report writer's final recommended boundaries of the SNA post the reconvened hearing, which needs to be developed to give effect to RPS Policy 23.

152. At the reconvened hearing on the 3 April 2024, the extent of the Significant Natural Area was considered, and the Panel heard from submitters and expert ecologists. The expert ecologists

both agreed that the area shown in yellow, and the area shown in the blue circle in map two above, should be retained as notified.

153. However, there was some areas of disagreement between the expert ecologists on the extent of the remaining area shown in orange (outside of the blue circle) in map two above. Some submitters also sought that the extent of the SNA was extended further and provided information to the hearing on where and why this should occur.
154. Both ecological experts agreed that the additional areas raised by submitters were unlikely to meet the criteria in the Regional Policy Statement and that there should be no further extension to the SNA.
155. Having heard from submitters and expert ecologists, I am of the opinion that the area shown in yellow in map two should be retained and recommend that the SNA remains as notified and as identified in map one. This recommended amendment is included in part six of this right of reply.

c. a separate map, identify any areas that are being recommended for change. Scope of Submissions

156. A separate map has not been provided since having heard all the evidence, my recommendation is to retain the extent of the SNA as notified in Variation 1.

[Royal Wellington Golf Club](#)

Question 26

During the hearing, the Panel heard from the Royal Wellington Golf Club who indicated that they hoped their submission would enable their site to be withdrawn from PC49 – as the status quo district plan provisions were preferred. Please advise what scope the Panel has in its deliberations to give effect to this perspective. If the scope of submissions does not enable the land to be withdrawn from PC49, what procedural options would be open to the Council (not the Panel) should it wish to withdraw those areas from the Plan Change.

157. Under the Operative District Plan the zoning for the Royal Wellington Golf Club is split zoned – Special Activity and Open Space, and this is proposed to be rezoned to Sport and Active Recreation under PC49.
158. At Appendix Five I have provided a comparison of the Operative District Plan and PC49 provisions that are relevant to the submission and evidence presented at the hearing.
159. I note that at the hearing the submitter was particularly concerned about the building heights permitted under the proposed new zoning.
160. It is my understanding that the submitters primary concern is around the permitted height provisions, which for the Sport and Active Recreation Zone in PC49 is 9m, compared to the operative Special Activity Zone provisions of 15m and the operative Open Space Zone provisions of 8m. The adjacent Residential Zone enables a building height of 11m as a permitted activity.

161. The relief sought by the Royal Wellington Golf Club in their submission is “that the maximum height above ground level of any building remain unchanged from the Operative District Plan (15m), or other such similar relief”.
162. I cannot find scope within the Royal Wellington Golf Club submission or other submissions to withdraw the provisions as they relate to the site. However, I note that clause 8D of Schedule 1 of the RMA would enable Council to withdraw parts of a Council initiated plan change.
163. In my opinion, if the zoning as it relates to the Royal Wellington Golf Club were to be withdrawn and the zoning remain as Special Activity Zone, this could create inconsistency with other Sport and Active Recreation Zones, which also includes other Golf Courses in Upper Hutt.
164. My understanding is 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.
165. I also note that the Royal Wellington Golf Club does provide scope to amend the building heights to between 9m and 15m, which may address the concerns of the Royal Wellington Club without the need to withdraw the provisions.
166. A summary of their submission is below for ease of reference:
- “Amend to retain the maximum height above ground level of any building from the Operative District Plan Special Activity Zone (15m), or other such similar relief.
- The submitter opposes this standard on the basis that it is less than the existing District Plan provisions allow for, and this could restrict any future rebuilding of the clubhouse if the existing structure was damaged or destroyed, as the current clubhouse exceeds the permitted standard.
- Furthermore, the submitter is concerned that minor alterations would trigger non-compliances with this standard. The submitter states that SARZ-R5 (height control planes) would manage the effects of building height in relation to surrounding sites”.
167. The Panel may wish to consider the assessment of the zone provisions in the section 32 report, including that there is a consenting pathway for buildings higher than 9m.

[Hutt Valley Clay Target Club](#)

Question 27

During the hearing, the Panel granted 10 minutes to Mr Scott for the Hutt Valley Clay Target Club to present to the Panel (see Minute 2). The Panel asked Mr Scott questions regarding the existing certificate of compliance held by the operation of the club on the site. The Panel would like the section 42A reporting officer to confirm whether:

- a) **the proposed change in zoning and club shooting days under PC49 would be permitted under the certificate of compliance; and**
- b) **whether the certificate of compliance would cease to apply following the proposed change in zoning and club shooting days; and**
- c) **whether the club would need to go through a separate exercise to enable the club to operate under the proposed new zoning and increase in shooting days.**
- d) **Should the above demonstrate the existing use rights established by the certificate of compliance would no longer apply under the proposed change in zoning and shooting days, the Panel would like to understand:**
 - i. **What separate process would the club need to go through to continue to operate as proposed.**

168. A response to these questions is provided in paragraphs 15 to 18 of the legal advice attached in Appendix Three and information relating to the Certificate of Compliance is attached in Appendix Eight.

ii. What scope the Panel has in its deliberations to address these issues.

169. The provisions as notified identified 100 shooting days for the Clay Target Club while Submission 12 (John Hill) seeks that the 80 shooting days defined in an Environment Court hearing in 2003 should be upheld legally. In my opinion, this provides scope for the number of shooting days recommended by the Panel in the decision report to be set between 80 and 100 days.

170. I have no further recommendations to that provided in the section 42a report for PC49 following the hearing in respect of the shooting days at the Hutt Valley Clay Target Club.

[Wooster and Teasdale](#)

Question 28

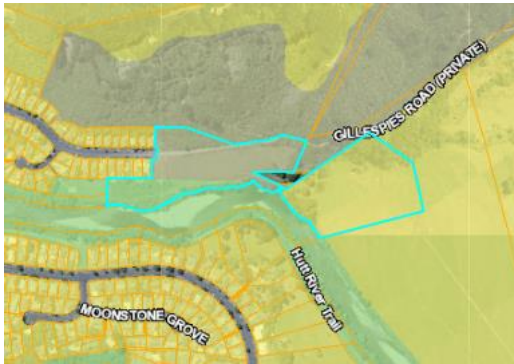
The Wooster & Teasdale Families (Submission 20) did not attend the hearing. This meant the Panel was unable to ask the submitter questions in order to confirm what specific zoning amendments to PC49 the submitter still sought following rezoning of parts of the site via the Council’s Intensification Planning Instrument. The Panel would like the section 42A reporting officer to confirm via a map which, if any, parts of the submitter’s land the Panel must turn its mind to in its deliberations and in forming its recommendations on submission 20.

171. A partial response to this was provided in the Council’s response to Minute #6.

172. The Wooster and Teasdale submission requested amending “the planning maps to replace the proposed Open Space and Recreation Zone’s from the parts of 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 (150 and 146 Gillespies Road) that are not currently within the active bed of the Hutt River and rezone this land a different zone which enables outlined provisions”.

173. A map of each of these lots is provided below:

Lot 2 DP52807



Pt Lot 2 Deposited Plan 58853



Pt Lot 2 Deposited Plan 17413;



Lot 1 Deposited Plan 10580



Lot 2 Deposited Plan 10580



174. Based on these maps, in my opinion, the only sites that I would consider is within scope of the plan change would be those identified in the Council's response to Minute #6. For ease of reference these are shown below:

Part of Pt Lot 2 Deposited Plan 58853



Part of Pt Lot 2 Deposited Plan 17413;



175. In terms of scope for further amendments, the Panel may also wish to consider the further submission of Greater Wellington Regional Council (FS7).

[Future Development Strategy for the Wellington Region](#)

Question 29

As the FDS is now operative, the section 42A author is to provide a link to the FDS and their advice on any effect of the operative FDS on the plan change/variation/recommendations on submissions.

176. The final document was approved 19 March 2024 and is available at [1404-GWRC-WLRC-Future-Development-STRATEGY-2024-240223-06.pdf \(wrlc.org.nz\)](#)
177. The Future Development Strategy for the Wellington Region was informed in part by PC49 and so there is consistency between the documents. The Future Development Strategy for the Wellington Region identifies a desire to ensure provision of open space and the protection and enhancement of our existing open spaces.
178. Consideration of the Silverstream Spur with respect to Future Development Strategy for the Wellington Region is addressed in my response to Question 21 of this right of reply.

[National Policy Statement for Indigenous Biodiversity](#)

Question 30

The Panel notes the Variation 1 section 42A author's intention to provide an assessment against the NPS-IB, particularly clauses 3.10 and 3.11. Please ensure that this assessment includes the following matters:

179. An assessment against the NPS-IB is considered in response to Questions 1 and 2 of this right of reply. In addition, I also respond to the following questions from the Panel.
- a) **Please confirm whether the rules package is intended to provide for a road in accordance with 3.11(1)(a)(i)a ...specified infrastructure as defined in NPS-IB 1.6 specified infrastructure (c).**
180. Clause 3.11(1)(a)(i) states:

Clause 3.10(2) does not apply, and any adverse effects on an SNA of a new subdivision, use or development must be managed in accordance with clause 3.10(3) and (4), if:

(a) the new subdivision, use or development is required for the purposes of any of the following:

(i) construction or upgrade (if the upgrade does not meet the requirements of clause 3.15(2)) of specified infrastructure that provides significant national or regional public benefit.

181. In my opinion the rules package does not provide for a road in accordance with clause 3.11(1)(a)(i) since, I would not consider that the road corridor in the Silverstream Spur provides significant national or regional benefit.
182. By this reasoning Clause 3.10(2) would apply but not 3.10(3).
183. I am aware that Clause d) of the definition of specified infrastructure on the National Policy Statement for Indigenous Biodiversity states:
- “(c) infrastructure that is necessary to support housing development, that is included in a proposed or operative plan or identified for development in any relevant strategy document (including a future development strategy or spatial strategy) adopted by a local authority, in an urban environment (as defined in the National Policy Statement on Urban Development 2020)”
184. Whilst the Southern Growth Area is not identified as a priority site within the Future Development Strategy for the Wellington Region, it is included in the 2016 Upper Hutt Land Use Strategy. However, I do note that the Land Use Strategy was developed at a point in time, and Council has since collected further evidence in the 2023 Housing and Business Assessment, which shows sufficient realisable capacity without the Southern Growth Area.
185. Further, the National Policy Statement on Urban Development defines an urban environment as meaning “any area of land (regardless of size, and irrespective of local authority or statistical boundaries) that:
- a) is, or is intended to be, predominantly urban in character; and
 - b) is, or is intended to be, part of a housing and labour market of at least 10,000 people.
186. I am not entirely convinced that the Southern Growth Area is or is intended to be predominantly urban in character.
187. With regards to clause 3.11 (b) and (c) I also remain unconvinced that the Southern Growth Area would represent a functional need or operational need for the new subdivision, use or development to be in that particular location; nor that there are no practicable alternative locations for the new subdivision, use or development given the evidence in the 2023 Housing and Business Assessment.

- b) **Please include a link to the Council’s Code of Practice for road engineering design standards, so that the Panel can understand the scale of different roads depending on their classifications.**

<https://www.upperhuttcity.com/Home/Tabs/New-page/Your-Council/Plans-policies-bylaws-and-reports/Code-of-Practice-for-Civil-Engineering-Works>

- c) **Section 42a author is to advise whether the recommended provisions for development within the SNA as set out in the amended Section 42a report.**

- i. **are required to give effect to the avoidance and management requirements of clause 3.10 of the NPS-IB**

188. The National Policy Statement requires territorial authorities to identify and manage indigenous biodiversity. In my opinion NOSZ-P7 and NOSZ-R22 as proposed in the revised section 42a report for Variation 1 are required to give effect to requirements in Clause 3.10 of the National Policy Statement for Indigenous Biodiversity. This will ensure adequate protection for the Significant Natural Area on the Silverstream Spur until such time that the Council initiates a plan change to give full effect to the National Policy Statement for Indigenous Biodiversity.

- ii. **to advise whether the recommended provisions achieved those requirements, and if not, advise what alternative provisions would achieve them.**

189. Please see response to question c) i. above. The effects hierarchy in Policy NOSZ-P7 as recommended for amendment in the revised section 42a report is entirely consistent with the effects management hierarchy in Clause 3.10 of the National Policy Statement for Indigenous Biodiversity.

190. In particular, the discretionary activity status proposed for rule NOSZ-R15 allows all matters of relevance to be taken into account in decision making.

191. With regards to rule NOSZ-R22, if the Panel were to consider strengthening this rule to achieve greater consistency with the National Policy for Indigenous Biodiversity, this could cross reference policy NOSZ-P7 or revert to the rule NOSZ-R22 as notified, which was a discretionary activity.

192. In my opinion a restricted discretionary activity affords adequate protection, as rule NOSZ-R22, as recommended in the revised section 42a report, includes effects on biodiversity and effects on ecological values as matters over which Council restricts its discretion.

Question 31

Please provide the Panel with direction on scope that may be available from submissions, or from the requirement to give effect to the NPS-IB, for any additional recommended amendments that may be included in the right of reply.

193. In relation to Question 30 above, no additional recommendations are made, but if the Panel considers that a discretionary activity status for rule NOSZ-R22 is more appropriate, then there is scope in submissions to achieve this including submission Royal Forest and Bird Protection Society Inc. (S74).

Silverstream Spur – Operative and Variation 1 provisions

Question 32

Please provide the existing relevant objectives, policies and rules framework from across the District Plan for the modification of indigenous vegetation, the construction of a road and other infrastructure, and earthworks that would apply under the existing and proposed zonings. Please then set out the provisions proposed through PC49/V1 and undertake a comparison.

194. In responding to this question, I have assumed that this question relates more specifically to Variation 1, noting that the wider plan change 49 provisions do not include a road corridor and rezones all open space zones in the Operative District Plan in accordance with the National Planning Standards.

This is to include details of:

a. The activity status for these activities under the status quo and the proposed zoning; and

195. This is addressed in the paragraphs below.

b. The policy direction for these activities under the status quo and the proposed zoning; and

196. This is provided at Appendix Nine to this right of reply and below.

c. How the recommended provisions would interact with existing districtwide plan provisions that may manage the same activity (that are not within the scope of PC49/V1) e.g. the construction of a road and infrastructure, and the modification of indigenous vegetation. Would existing districtwide provisions be overridden or would they continue to apply?

197. In responding to this matter, I have referred to both the operative and proposed zones provisions. I would not consider that district wide issues would be overridden but that both may be relevant at consent application stage. However, where I have identified some inconsistencies and have scope to address this issue in this right of reply I have done so.

Objectives

198. The relevant objectives and policies are provided at Appendix Nine. Variation 1 does not include any objectives. Therefore, policies and rules in Variation 1 would give effect to the objectives in the Natural Open Space Zone in proposed by PC49 and the district wide provisions in the Operative District Plan. I have not identified any conflicts between the objectives in PC49 and those in the Operative District Plan.

Earthworks

Policies

199. NOSZ-P6 as notified in Variation 1 relates to a road on the Silverstream Spur, whilst policy NOSZ-P7 as notified relates to the Silverstream Spur (Significant) Natural Area. Neither policy

refers to earthworks, and policy NOSZ-P7 manages the effects on biodiversity values. In the Operative District Plan, Policy EW-P1 also seeks to manage earthworks so that they are compatible with significant areas of indigenous biodiversity.

200. I have not found any matters of inconsistency in policies that manage earthworks.

Rules

201. I do not consider there to be any conflicts between the earthworks rules framework in the Operative District Plan and the proposed provisions in PC49 or Variation 1. All earthworks associated with the road would need to comply with district wide earthworks rules contained in the Earthworks Chapter of the Operative District Plan.
202. In the Operative District Plan (for rules that sit outside of the earthworks chapter) and in PC49 and Variation 1, references to earthworks are limited to matters of discretion or matters over which Council may impose conditions. These matters are contained within rules and standards on subdivision, earthworks near transmission lines, indigenous vegetation removal and buildings.
203. Variation 1 does include an accidental discovery protocol for earthworks on the Silverstream Spur. I can only find a similar requirement in respect of Development Area 3 in the Operative District Plan provisions. In my opinion, this does not create an issue, and there are no submissions on this matter. Topic 9 of the revised section 42a report provides reasoning for its inclusion in Variation 1.

Indigenous Biodiversity

Policies

204. Policy NOSZ-P7 seeks to manage indigenous biodiversity on the Silverstream Spur Significant Natural Area. All other policies are contained within the Ecosystems and Indigenous Biodiversity Chapter of the Operative District Plan. The effects management hierarchy in NOSZ-P7 are generally consistent with the 'protect and enhance indigenous biodiversity and significant indigenous vegetation' policies in the Ecosystems and Indigenous Biodiversity Chapter.
205. Policy NOSZ-P6 as recommended for amendment in the revised Section 42a report also requires that effects are managed in accordance with NOSZ-P7. While there may be conflict in the policies in the wider Operative District Plan, I am of the opinion that the cascading rules will seek to achieve the outcomes of both the individual policies.
206. A discretionary activity for Rule NOSZ-R15 would mean that all effects on indigenous biodiversity can be considered at consents stage.
207. The General Residential rule also includes an Indigenous Biodiversity Precinct, but the overlay associated with this does not include the Silverstream Spur.

Rules

208. Indigenous biodiversity matters are largely addressed in the Operative District Plan's district wide rules. There are no relevant equivalent rules in the Operative District Plan General Residential and General Rural Zone chapters.
209. PC49 includes effects on indigenous biodiversity as a matter of discretion in the rules and standards for the Natural Open Space Zones and, therefore, I do not consider there to be any conflicts with the Operative District Plan rules.
210. However, rule NOSZ-R22 in Variation 1 manages indigenous vegetation removal on the Silverstream Spur. Rule NOSZ-R22 is less permissive than the permitted activity standards in rules ECO-R1 and ECO-R2 of the Operative District Plan. In my opinion, this is appropriate given that a Significant Natural Area is identified on the Silverstream Spur.
211. Council has not yet initiated a plan change to give full effect to the National Policy Statement for Indigenous Biodiversity, and generally if there is a conflict, the more restrictive rule would apply.

Roading

Policies

212. I cannot identify any areas of particular conflict between policies NOSZ-P6 and NOSZ-P7 and the wider district wide policies. As identified above, where there is any potential conflict, the cascading rules, as recommended in the revised section 42a report, will seek to achieve the outcomes of the policies and ensure that all effects are addressed.

Rules

213. Roothing provisions are largely contained within the Transport and Parking chapter of the Operative District Plan. There are no equivalent rules in the General Residential and General Rural provisions in the Operative District Plan, or the Natural Open Space Zone in PC49.
214. The operative General Rural and General Residential zone provisions are largely limited to access standards and effects on the network as a matter of discretion, rather than including provisions that enable the construction of a road.
215. The relevant rule in Variation 1 is NOSZ-R15. I have identified an issue with rule numbering in Variation 1 as there is a rule NOSZ-R15 in both PC49 and Variation 1. The non-complying activity rule TP-R5 in the Operative District Plan should also be TP-R6. This is relevant as I refer to the non-complying rule TP-R5 in response to question 32d of this right of reply.
216. Any numbering errors will be addressed either under clause 16 or clause 20 of Schedule 1 of the RMA.
217. There are catch all rules in the Natural Open Space zones and General Rural and General Residential zones that could apply to a road as set out below.

GRZ-R21 – **Discretionary**

Activities which are not listed in this Table unless otherwise covered in the District-wide matters of the Plan.

NOSZ-R19 – Discretionary

Any activity not provided for as a permitted, restricted discretionary or non-complying

GRUZ-R26 – Non-complying

Activities which are not listed in this Table unless otherwise covered in the District-wide matters of the Plan

- 218. The construction of a road is not listed in the tables for the operative General Residential, General Rural and proposed Natural Open Space zone rules and so may be considered to be a discretionary in the General Residential and Natural Open Space zones.
- 219. However, bundling is also relevant here and the Operative District Plan identifies roads on the Open Space zones are a non-complying activity in rule TP-R5. I incorrectly identified a road outside of the Silverstream Spur Significant Natural Area as a discretionary activity in the reconvened hearing.

Network utilities

Policies

- 220. I cannot identify any areas of particular conflict between policies NOSZ-P6 and NOSZ-P7 and the wider district wide policies. As identified above, where there is any potential conflict, the cascading rules, as recommended in the revised section 42a report, will seek to achieve the outcomes of the policies and ensure that all effects are addressed.
- 221. I have, however, identified some potential issues in the rule framework which are set put below.

Rules

- 222. For the purposes of this assessment, I have limited the Operative District Plan Network Utility provisions identified to those that are directly related the construction of the road. These are rules that relate to reservoirs and storage tanks.
- 223. As there are no specific rules for storage tanks in the Operative District Plan, the most relevant equivalent rule to NOSZ-R15 in Variation 1 is NU-R27. The relevant rules that manage the same activities in the Operative District Plan and Variation 1 are set out below for ease of reference.

Operative District Plan provisions	Variation 1 provisions as notified
NU-R25 – Restricted Discretionary Water reservoirs	NOSZ-R15 – Controlled Road and associated network utility infrastructure, including storage tanks or reservoirs on the Silverstream Spur

<p>Council will restrict its discretion to, and may impose conditions on the matters listed in this rule.</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, odour, 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. 12. Earthworks and erosion and sediment control. 	<p>(Significant) Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189) is a discretionary activity.</p> <p>Council may impose conditions over the following matters:</p> <ol style="list-style-type: none"> b) Landscaping. c) Road alignment location and design. d) Provision of and effects on network utilities and/or services. e) Earthworks and accidental discovery. f) Financial contributions. g) Effects on biodiversity in the identified Silverstream Spur Natural Area.
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<p>13. Any adverse effects on an identified heritage site or an area of native vegetation.</p>	
<p>NU-R27 – Discretionary activity All network utilities that are not otherwise listed as a permitted, controlled, restricted discretionary or non-complying activity.</p>	<p>NOSZ-R15 – Controlled</p> <p>Road and associated network utility infrastructure, including storage tanks or reservoirs on the Silverstream Spur (Significant) Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189) is a discretionary activity.</p> <p>Council may impose conditions over the following matters:</p> <ul style="list-style-type: none"> b) Landscaping. c) Road alignment location and design. d) Provision of and effects on network utilities and/or services. e) Earthworks and accidental discovery. f). Financial contributions. g) Effects on biodiversity in the identified Silverstream Spur Natural Area.

224. This appears to create an issue in that the NU-R25 in the Operative District Plan would apply to the Silverstream Spur outside of the Significant Natural Area, and afford a higher level of protection than rule NOSZ-R15 within the Silverstream Spur Significant Natural Area.
225. A similar issue applies in respect of the relationship between rule NU-R27 in the Operative District Plan and NOSZ-R15 in Variation 1 i.e. storage tanks would be discretionary activity outside the Silverstream Spur Significant Natural Area and a controlled activity within the Silverstream Spur Significant Natural Area.
226. This would be addressed if the Panel agreed with the recommendation in the revised Section 42a report for Variation 1 for rule NOSZ-R15 to be a discretionary activity. In my opinion, it appropriate to afford the Significant Natural Area the same or a higher level of protection than outside of the Significant Natural Area.
227. In revisiting the Operative District Plan provisions, I have also noted a further inconsistency between rule NU-R27 and what should be rule TP-R6 of the Operative District Plan. This is further discussed in paragraph 221 and 222 of this right of reply.

d. The Section 42a author is to provide their advice on how best to resolve any identified rule and policy direction inconsistencies, including the scope available to address any identified inconsistencies, or the Section 42A officer’s recommendation on any potential alternative methods (including consequential amendments) that may be available to the Council to resolve the inconsistencies.

228. At the reconvened hearing the Guildford Timber Company identified that there is a potential issue with the provisions relating to the road. In their view the amendments recommended in

the revised section 42a assessment for Variation 1, only enables a road within and not outside of the Significant Natural Area as a discretionary activity.

229. Having revisited the operative and proposed provisions following the reconvened hearing, I note the following:

- The proposal to amend the activity status of Rule NOSZ-R15 in the revised section 42a report for Variation 1 does not change the location to which this rule applies.
- In my opinion, the provisions as notified only enable a road as a controlled activity within the Silverstream Spur Significant Natural Area and not the Natural Open Space Zone as a whole. (NOSZ-R15: Road and associated network utility infrastructure, including storage tanks or reservoirs on the Silverstream Spur Significant Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189)
- The Silverstream Spur Significant Natural Area as notified was the area identified in yellow below:



- Neither the wider plan change 49 or Variation 1 as notified, proposed to amend Rule TP-R5 (TP-R6) of the Operative District Plan.
- Rule TP-R5 (TP-R6) identifies that the construction, alteration or diversion of roads (but excluding any such construction works which are part of a subdivision) is a non-complying activity in the Open Space zones.
- I have also noted that rule NU-R27 in the Operative District Plan identifies that in all zones, network utilities that are not otherwise listed as a permitted, controlled, restricted discretionary or non-complying activity are a discretionary activity.
- A road is not listed as a permitted, controlled, restricted discretionary or non-complying activity. Therefore, under rule NU-27 a road would be a discretionary activity in all zones given that the definition of network utility in the Operative District Plan includes the construction of a road.

- This results in an unintended outcome where the level of protection outside of the Silverstream Spur Significant Natural Area is higher than that within the Significant Natural Area.
- This would be the case whether the road within the Silverstream Significant Natural Area was a controlled or discretionary activity.
- Submission 82, Guildford Timber Company provides scope to address inconsistencies for the Silverstream Spur. Specifically, submission point 82.1 seeks consequential amendments to address the relief sought in this submission.

230. The recommended amendments to address this inconsistency for TP-R5, NU-R27 and NOSZ-R15 are set out in part six of this right of reply.

[National Policy Statement on Urban Development](#)

Question 33

Please provide the most recent HBA figures on housing land supply/demand, with an analysis of whether PC49 / Variation 1 still enable the supply of housing land to be provided. This is to enable the Panel to ensure its recommendations to Council are consistent with the ‘using evidence and analysis’ requirements of Clause 3.11 of the NPS-UD. 10.

231. This is addressed in response to Questions 20 and 21.

[Assessment of the Whaitua Te Whanganui-A-Tara Implementation Programme](#)

Question 34

Given that the Panel heard evidence and submissions confirming the existence of freshwater bodies on the Silverstream Spur, please ensure that an evaluation of the Whaitua Te Whanganui-A-Tara Implementation Programme is included as part of the evaluation of overarching planning instruments.

232. This is provided in Appendix Ten.

[Recommended Amendments](#)

233. I am recommending amendments to rules TP-R5 (Discretionary) and TP-R6 (Non-complying) as a consequence of the recommendation for a road and associated utilities within the Silverstream Spur Natural Area to be a discretionary activity in the revised section 42a report. This addresses the inconsistency of a road outside the Silverstream Spur Significant Natural Area having a higher level protection than a road within the Silverstream Spur Significant Natural Area.
234. I also recommend that the extent of the Silverstream Spur Significant Natural Area be retained as per the notified version identified in Map 1 above. I note that this is a change in position to that recommended in the revised Section 42a report but continue to recommend that the Silverstream Spur Significant Natural Area is the Silverstream Significant Spur Natural Area.

PART SIX – RECOMMENDED AMENDMENTS

235. I recommend the following changes to PC49 and Variation 1.

Recommended Amendments to PC49

236. No further recommended amendments in response to submitter evidence. I do, however, show in Appendix One the removal of the car parking standards in relation to question 8 of this right of reply.

Recommended Amendments to Variation 1

237. Having read the submissions and heard the evidence presented, my recommended amendments remain largely the same as that identified in the revised section 42a report. However, I so recommend amendments the rules TP-R5 and TP-R5 (TP-R6) as set out below and in Appendix Two.

238. Rule 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

239. Rule TP-R5 (TP-R6) – Non-complying

TP-R5 Non-Complying

The construction, alteration or diversion of roads, but excluding any such construction works which are part of a subdivision and a road within the Silverstream Spur: Part Section 1 SO 34755

240. I recommend a change in position in relation to the extent of the Silverstream Spur. In the revised Section 42a report I recommend an amendment to remove the area shown as yellow in Map Two of this right of reply. Following the hearing I recommend that the extent of the

Silverstream Spur Significant Natural Area remains as notified and as shown in Map One in this right of reply.

Section 32AA assessment

241. Below is the section 32AA assessment for recommended amendments to TP-R5 and TP-R5 (TP-R6).

Effectiveness and efficiency

242. The recommended amendments in Rules TP-R5 and TP-R5 (what should be TP-R6) represent an effective approach to ensure that there is consistency in the provisions that relate to the construction of a road within and outside of the Silverstream Spur Significant Natural Area. The inclusion of an accidental discovery protocol for the Silverstream Spur is an effective approach to ensure that any cultural or archaeological values of the land are recognised in if earthworks are undertaken on the site as a result of this variation.

This provides efficiency for the public and landowners in understanding the requirements for a road that may be constructed at a location that is both within a Natural Open Space Zone and a Significant Natural Area.

Other reasonably practicable options

243. If rules TP-R5 and TP-R6 were not amended, this would create an issue where the activity status of a road outside of the Silverstream Spur Significant Natural Area would be non-complying and would be afforded a higher level of protection than for the Significant Natural Area.
244. The panel does have the option to consider amending rule NOSZ-R15 further and making this a non-complying activity and there is scope within the submission from Forest and Bird to do that.
245. However, a discretionary activity would still enable all effects associated with the construction of a road to be considered at consent stage.

Cost and benefits

246. The proposed amendments will not result in additional costs, based on the overall scale of the changes being minor and only relating to the Silverstream Spur.
247. The benefit will be the addition of safeguard for any accidental discovery of archaeological material by the introduced provisions.

Risks of acting or not acting

248. There is no significant risk in not acting as land uses are not proposed to change as a result of these amendments.
249. The risk of acting is that the Silverstream Spur will have a more enabling activity status than the construction of roads in other Natural Open Space Zones. This risk may be mitigated by the fact that most Natural Open Space Zones are within the Regional Parks.

Decision about most appropriate option

250. The proposed amendments are considered to be the most appropriate option in addressing effects and inconsistencies between operative and proposed plan provisions.

Appendix One - Final recommended amendments to PC49 provisions

Appendix Two - Final recommended amendments to Variation 1 provisions

Appendix Three – Legal advice received on matters raised at the hearing

Appendix Four – Relevant Plan Change 47 provisions

Appendix Five- Comparison of Rules and Standards for Royal Wellington Golf Club – Operative District Plan Special Activity and Open Space Zones/ PC49 Sport and Active Recreation Zone

Appendix Six- Comparison of Rules and Standards for Silverstream Spur

Appendix Seven - Buddle Findlay 2022 legal advice about scope of
Plan Change 49

Appendix Eight - Information relating to the certificate of compliance
for the Hutt Valley Clay Target Club

Appendix Nine – Objectives and policies relevant to Variation 1

Appendix Ten - Evaluation of the Whaitua Te Whanganui-A-Tara Implementation Programme