



Te Kaunihera o  
**Te Awa Kairangi ki Uta**  
**Upper Hutt City Council**

# Section 42A Report

## Variation 1 on Proposed Plan Change 49 – Silverstream Spur

Update to Section 42A assessment to address further expert evidence requested by the panel.

**PREPARED BY: SUZANNE RUSHMERE | ACTING PLANNING POLICY MANAGER**

Date: ~~3 November 2023~~ 5 March 2024

# TABLE OF CONTENTS

1.	Introduction .....	7
1.1.	Purpose of this updated section 42a report .....	7
1.2.	<del>1.1</del> Qualifications and experience .....	7
1.3	<del>1.2</del> Code of Conduct .....	8
1.4	<del>1.3</del> Conflict of Interest .....	8
1.5	<del>1.4</del> Preparation of this report.....	8
2.	Scope of Report.....	8
2.1	Matters addressed by this report.....	8
2.2	Overview of Variation 1 to Proposed Plan Change 49 – Silverstream Spur .....	9
	The site .....	9
	The proposal.....	11
	Growth Context.....	13
2.3	Statutory requirements.....	14
2.4	Section 32AA.....	18
2.5	Procedural matters .....	19
3.	Consideration of submissions received.....	19
3.1	Overview of submissions .....	19
3.2	Structure of this report .....	19
3.3	Format for consideration of submissions.....	20
3.4	Topics covered in this report.....	20
4.	Topic 1: General .....	21
4.1	Matters raised by submissions .....	21
4.2	Analysis.....	22
4.3	Recommended decision .....	22
4.4	Recommended amendments.....	23
5.	Topic 2: Out of scope requests .....	23
5.1	Matters raised by submissions .....	23
5.2	Analysis.....	24
5.3	Recommended decision .....	24
5.4	Recommended amendment.....	25
6.	Topic 3: Silverstream Spur Zoning.....	25
6.1	Matters raised by submissions .....	25
6.2	Analysis.....	26
6.3	Recommended decision .....	27

6.3	Recommended amendment.....	28
7.	Topic 4: Significant Natural Areas.....	28
7.1	Matters raised by submissions .....	28
7.2	Analysis .....	30
7.3	Recommended decision .....	33
7.4	Recommended amendment.....	35
8.	Topic 5: Infrastructure including a transport corridor.....	35
8.1	Matters raised by submissions .....	35
8.2	Analysis.....	38
8.3	Recommended decision .....	40
8.4	Recommended amendment.....	41
i.	Topic 6: Section 32 report.....	42
9.1	Matters raised by submissions .....	42
9.2	Analysis.....	43
9.3	Recommended decision .....	43
9.4	Recommended amendment.....	43
10	Topic 7: Landscapes .....	43
10.1	Matters raised by submissions .....	43
10.2	Analysis .....	44
10.3	Recommended decision .....	44
10.4	Recommended amendment.....	45
11	Topic 8: Customary Activities .....	45
11.1	Matter raised by the submission.....	45
11.2	Analysis.....	45
11.3	Recommended decision .....	45
11.4	Recommended amendment.....	46
12	Topic 9: Sites and areas of significance to Māori.....	46
12.1	Matter raised by submission .....	46
12.2	Analysis .....	46
12.3	Recommended decision .....	47
12.4	Recommended amendment.....	47
12.5	Section 32AA Analysis .....	48
13	Topic 10: Specific Amendments .....	49
13.1	Matters raised by submissions .....	49
13.2	Analysis .....	50
13.3	Recommended decision .....	52
13.4	Recommended amendment.....	53
13.5	Section 32AA Analysis .....	53

14	Conclusion .....	54
15	Recommendations.....	54
	Appendix A. Recommended amendments to Variation 1.....	55
	Appendix B. Recommended responses to submissions and further submissions.....	60
	Appendix C. Silverstream Spur preliminary archaeological assessment .....	61
	Appendix D. Expert ecological evidence .....	62
	Appendix E. Extracts from legal advice provided by Buddle Finlay relevant to the NPS-IB.....	63

**Table 1: Abbreviations**

<b>Abbreviation</b>	<b>Means</b>
the Act / the RMA	Resource Management Act 1991
the Council	Upper Hutt City Council
the Operative Plan / ODP	Operative Upper Hutt City Plan 2004
the Spur	The Silverstream Spur
GTC	Guildford Timber Company
GWRC	Greater Wellington Regional Council
HBA	Housing and Business Development Capacity Assessment
IPI	Intensification Planning Instrument
MDRS	Medium Density Residential Standards
MoU	Memorandum of Understanding
NPS-UD	National Policy Statement on Urban Development
PC47	Proposed Plan Change 47 – Natural Hazards
PC48	Proposed Plan Change 48 – Landscapes
PC49	Proposed Plan Change 49 – Open Spaces
Proposed RPS Change 1	Proposed Change 1 to the Regional Policy Statement for the Wellington Region
SAL	Special Amenity Landscapes
SASM	Sites and areas of significance to Māori
SGA	Southern Growth Area
SNAs	Significant Natural Areas
Waka Kotahi NZTA	Waka Kotahi New Zealand Transport Authority
Variation 1	Variation 1 on Proposed Plan Change 49 – Silverstream Spur

**Table 2: List of submissions and further submissions addressed in this report**

Submission No.	Submission name	Submission No.	Submission name
1	Bob Alkema	48	Donald Keith Skerman
2	Doug Fauchelle	49	Rick Wheeler
3	Stuart Grant	50	Abbie Spiers
4	Caroline Woollams	51	Derek Reeves
5	Lynda Joines	52	Phil Hancock
6	Stephen Butler	53	Steven Robertson
7	Helen Chapman	54	Suilva Fay McIntyre
8	Craig Thorn	55	Jason Durry
9	Duncan Stuart	56	Quintin Towler
10	Logan McLean	57	Christian Woods
11	Carl Leenders	58	Marie Harris
12	Jonathan Board	59	Nadine Ebbett
13	Adam Ricketts	60	Ben Jones
14	Howie Rait	61	Scott Fitzgerald
15	Lisa Clephane	62	Martin McGlue
16	Herenga ā Nuku/Outdoor Access Commission- David Barnes	63	Trevor Richardson
17	Kelsey Fly	64	Elizabeth Maria Christensen
18	Silverstream Retreat – John Ross	65	Janice Nancy Carey
19	Greater Wellington Regional Council	66	Anthony Carey
20	Colin Rickerby	67	Lynette Elizabeth Smith
21	Michael Gray	68	Leo Parnell Smith
22	Jane Derbyshire	69	Heather Blissett
23	John D O'Malley	70	Katelin Hardgrave
24	Nancy Bramley-Thompson	71	Mary Beth Taylor
25	Maurice Berrington	72	Peter Ross
26	Ian Price	73	Shayne Fairbrother
27	Doug Johnston	74	Royal Forest and Bird Protection Society Inc (Forest and Bird) - Amelia Geary
28	Lance Hurly	75	Polly Forrest
29	Peter Zajac	76	Kate Hunter
30	Laura Johnston	77	Tony Chad
31	W Gibson	78	Caleb Scott
32	Tom Halliburton	79	Upper Hutt Branch of Royal Forest and Bird Protection Society Inc (Forest and Bird) - Barry Wards
33	Calvin Berg	80	John Campbell
34	John Durry	81	Ros Connelly
35	Graham Bellamy	82	The Guildford Timber Company Limited
36	Chris & Julie Manu	83	Pam Hurly
37	Cathy Price	84	Wayne Dolden
38	Gerald and Carleen Bealing	85	D Garland
39	Jennifer Durry	86	Simon Edmonds
40	Stephen Bell	87	David Grant-Taylor

41	Bob McLellan	88	Silver Stream Railway Incorporated
42	Pat van Berkel	89	Lisa Marshall
43	Heather Frances Beckman	90	Rhys Lloyd
44	Lynne McLellan	91	Save our Hills (Upper Hutt) Incorporated (SOH)
45	John Pepper	92	Rachel Stuart
46	Chris Cosslett	93	Ngāti Toa
47	Allan Sheppard	94	Jennifer Ann Dolton

Further Submission No.	Submission name	Further Submission No.	Submission name
1	Peter Zajac	14	Duigald Myers
2	Beatrice McCaul	15	Fraser Robertson
3	Shirley Anne Taylor	16	Royal Forest and Bird Protection Society Inc (Forest and Bird) - Amelia Geary
4	Pat van Berkel	17	Lynda Joines
5	Heather Blissett	18	Peter Ross
6	Christian Woods	19	Silver Stream Railway Incorporated
7	Carl Leenders	20	Caleb Scott
8	Helen Chapman	21	June Harwood
9	Graham Bellamy	22	Martin George McGlue
10	Save our Hills (Upper Hutt) Incorporated	23	Tony Chad
11	Susan Pattinson	24	Mary Beth Taylor
12	Guildford Timber Company	25	Anthony Carey
13	Duncan Stuart		

Please refer to **Appendix B. Recommended responses to submissions and further submissions** to see where each submission point is addressed within this report.

# 1. Introduction

## 1.1. Purpose of this updated section 42a report

1. Following adjournment of the hearing for Plan Change 49 and Variation 1 to Plan Change 49 – Silverstream Spur the panel issued Minute 9. This minute directs Council officers to instruct expert ecological evidence to be provided to the hearing, and to review as necessary their s42A assessment.
2. To assist the panel, updates to the section 42a report issued on 3 November 2023 are shown in green text in this updated report, with struck through text showing text that has been deleted and underlined text showing text that has been inserted.

## 1.2. ~~1.1~~ Qualifications and experience

- ~~1. My full name is Emily Jane Thomson. I am employed by Upper Hutt District Council as the Planning Policy Manager. I have held this position since February 2020.~~
- ~~2. I hold the qualifications of a Master of Resource and Environmental Planning, Bachelor of Landscape Architecture with honours, and a Bachelor of Science.~~
- ~~3. I have been employed in a planning role in local government for over 20 years. In this role I have undertaken the following tasks and responsibilities:  
a) Preparation and processing of plan changes;  
b) Preparation of submissions on national and regional planning instruments; and  
c) Preparation and presentation of evidence to Council, Board of Enquiry and Environment Court hearings.~~
- ~~4. The scope of my evidence relates to this topic. I confirm that the issues addressed in this statement of evidence are within my area of expertise as an expert policy planner.~~
3. My full name is Suzanne Rushmere. I am employed by Upper Hutt City Council (UHCC) as a Senior Policy Planner. I have held this position since August 2022. Prior to working at UHCC, I was employed by Kapiti Coast District Council in the District Plan and Roading teams.
4. 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).
5. 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 Housing and Business Assessment and the Future Development Strategy.

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<sup>1</sup> The author of this report has changed as a result of an internal secondment of the original author.

### 1.3 ~~1.2~~ Code of Conduct

6. I confirm that I have read the Code of Conduct for Expert Witnesses in the Environment Court Practice Note 2014 and that I have complied with it when preparing this report. Other than when I state that I am relying on the advice of another person, this evidence is within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions that I express.
7. I am authorised to give this evidence on the Council's behalf to the Hearing Panel.

### 1.4 ~~1.3~~ Conflict of Interest

8. I confirm that I have no actual or perceived conflict of interest.

### 1.5 ~~1.4~~ Preparation of this report

- ~~9. I have been involved in the development and preparation of Variation 1.~~
9. Except for attending the first four days of the hearing, I have not been actively involved in the development of Variation 1 on Proposed Plan Change 49 – Silverstream Spur.
10. The hearing for the Variation 1 on Proposed Plan Change 49 – Silverstream Spur opened on 27 November 2023 and was adjourned on 30 November 2023. Following uncertainties around the nature and extent of the Silverstream Spur Natural Area, the hearings panel have reconvened the hearing, and Council officers have been directed to provide expert evidence and a revised section 42A report.
11. This report provides an update to the evaluation of submissions and further submissions received in relation to the provisions related to Variation 1 following receipt of further expert evidence.
- ~~12. The scope of this report relates to evaluation of submissions and further submissions received in relation to the provisions related to Variation 1.~~
12. The data, information, facts, and assumptions I have considered in forming my opinions are set out in my evidence. Where I have set out opinions in my evidence, I have given reasons for those opinions. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.
13. In preparing this report I rely on expert advice from Victoria Grouden in relation to archaeology. The advice provided by Ms Grouden is included in Appendix C, [I also rely on the expert advice from Nick Goldwater in relation to ecology as set out in Appendix D.](#)

## 2. Scope of Report

### 2.1 Matters addressed by this report

14. This report is prepared in accordance with section 42A of the RMA and considers submissions and further submissions that were received by Upper Hutt City Council in relation to Variation 1 to proposed Plan Change 49 – Open Space to the Upper Hutt District Plan.



15. The purpose of the report is to:
  - Assist the Hearing Panel in making decisions on the submissions received on Variation 1.
  - To provide clarity to submissions and further submissions on how their submissions have been considered and assessed.
16. Within this report I have provided updated recommendations to the Hearing Panel where appropriate on the submissions and further submissions received, recommending whether, in my opinion, the decision and amendments sought should be accepted, accepted in part, or rejected. Any recommendation made within this report has been informed by the assessment subsequently undertaken on the relevant decision requested.
17. As identified above, the sections of the report, and recommendations in relation to submissions, that have been updated following receipt of further evidence are then highlighted using green strikethrough and underlining. Where there is no green struck through and underlined text no further recommendations are made.
18. In undertaking this update the paragraph numbers may vary from the Section 42A assessment released on the 3 November 2023.
19. I also note that the opening statement at the hearing from Ms Thomson noted some errors in the section 42A report released on 3 November 2023, I have not addressed these errors in this updated report.
20. The conclusions and recommendations made have been informed by the available information at the time of writing, however these are only preliminary recommendations to the Hearing Panel.
21. The scope of these updates is to address matters directed in minute 9 from the hearing panel.

## 2.2 Overview of Variation 1 to Proposed Plan Change 49 – Silverstream Spur

### The site

22. The Silverstream Spur (Pt Sec 1 SO 34755) is a 35-hectare site in the south-west of Upper Hutt purchased by UHCC in 1989. Under the Operative District Plan, the Silverstream Spur is currently split zoned General Rural and General Residential with a Residential Conservation Precinct. This changed from Rural Hill and Residential Conservation with the introduction of the National Planning Standards version of the District Plan released in 2021. The Silverstream Spur is not currently gazetted under the Reserves Act 1977. See Figure 1 below for the location and Figure 2 for the current zoning of the Silverstream Spur.



Figure 1 – Location of the Silverstream Spur

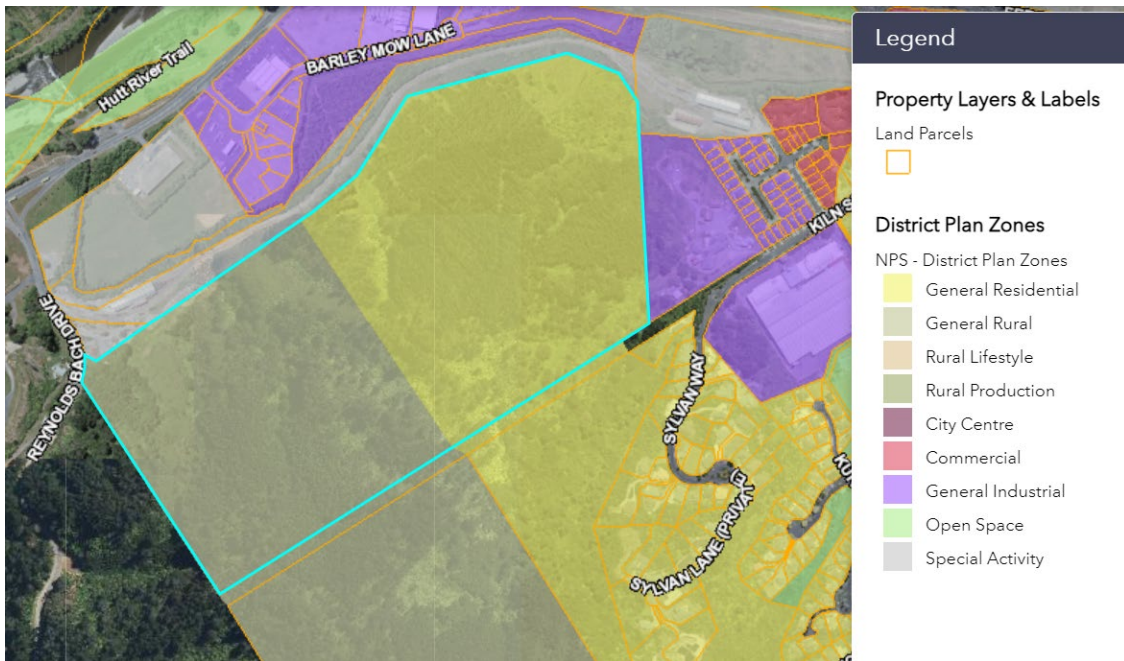


Figure 2 – Current zoning of the Silverstream Spur

23. The Silverstream Spur is located with a legal boundary to a paper road extending from the southern end of Kiln Street in Silverstream and also has a boundary with a very short section of Reynolds Bach Drive in Lower Hutt. The current practical walking access to the Silverstream Spur is via private land, either from Reynolds Bach Drive (via Section 2, Section 1 SO 35130 or Section 5 SO 461420), 44 Kiln Street, from the Silver Stream Railway property (Lot 1 DP 80311 or Section 987 Hutt District) or from tracks through the Guildford Timber Company land. The Kiln Street paper road is impractical for access due to the steep topography, presence of a stream and significant indigenous vegetation. Similarly, the topography is particularly steep adjacent to the Reynolds Bach Drive boundary. Therefore

currently, the Silverstream Spur has no adequate practical public access and relies on the use of surrounding private land for access.

24. The Silverstream Spur is currently vegetated with Plantation Forestry (*Pinus radiata*) on the upper portion with indigenous vegetation, mixed with exotic weeds in some parts (mostly gorse), on the lower slopes. The gullies within the Spur (and adjacent land) are vegetated with denser indigenous vegetation, in many cases this has been identified by Wildlands Limited as significant indigenous vegetation. A map and assessment of this vegetation was attached to the section 32 analysis report for this Variation.
25. The Silverstream Spur does not currently have adequate public access, to align with the purpose of the Natural Open Space, with members of the public tending to access the site through private land. The site does have potential access points including the paper road access off Kiln Street and from Reynolds Bach Drive. These potential access points would allow the public to utilise the site for recreation, conservation, and customary purposes. It would be appropriate to zone land as Natural Open Space if it is publicly owned with the potential for future open space use.

### **The proposal**

26. The purpose of Variation 1 is to facilitate appropriate zoning and provisions for the Silverstream Spur. A strong theme among the submissions received on proposed Plan Change 49 (PC49) was that the Silverstream Spur be zoned as Natural Open Space. Out of the 27 submissions received during the notification period 12 requested the rezoning. This was supported by 49 further submissions. One further submission also sought for the provision of a road corridor through the Silverstream Spur to access the Southern Growth Area (SGA).
27. PC49 specifically identified the Silverstream Spur as being out of scope of the plan change and therefore did not make any changes to the current zoning of the site. The high level of submissions to PC49 about the Silverstream Spur, and a change in the Council's intentions for the site, led to the development of Variation 1 to enable the consideration of an open space zone for the Silverstream Spur. The Variation 1 s32 report discusses this in more depth as well as some of the recent history of the Silverstream Spur.
28. Variation 1 proposes to zone the Silverstream Spur as a natural open space zone and introduces site-specific provisions to enable infrastructure, including a transport corridor, to open access for potential development of the Southern Growth Area (SGA) as well as enable the use of the Silverstream Spur for passive recreation, conservation, and customary activities. A key issue for enabling recreation activities is provision for appropriate public access to enable the community to utilise the space for a diverse range of activities, providing a positive contribution to health and wellbeing.
29. The Variation provisions focus on ensuring that there is a viable pathway to enable these outcomes while also ensuring the underlying natural character of the site is recognised and provided for including the protection of identified indigenous vegetation.
30. Variation 1 proposes two new policies to Natural Open Space Zone Chapter. NOSZ-P6 seeks to enable infrastructure, including a transport corridor, within the Silverstream Spur at an appropriate scale, location, and design. The intent of the infrastructure corridor is to provide support for the development of the Southern Growth Area and open access to the

Silverstream Spur for range of passive recreation, conservation, and customary opportunities.

31. NOSZ-P7 seeks to protect identified areas of significant indigenous vegetation from adverse effects from development. This follows an effects management hierarchy where effects from development should be avoided where practicable.
32. Variation 1 also introduces two new rules. NOSZ-R15 enables the development of a road and associated network utility infrastructure, including storage tanks. The activity status is Controlled when compliance is achieved with NOSZ-S4, and Discretionary when compliance is not achieved. NOSZ-R22 manages the removal of indigenous vegetation on the Silverstream Natural Area with the activity status of Discretionary.
33. Plan Change 49 (PC49) and Variation 1 were drafted using the National Planning Standards framework for zones and provisions drafting. The Upper Hutt District Plan underwent a 'rehousing' process during 2021 to align with the formatting and zoning requirements of the National Planning Standards introduced in 2019. The updated version of the District Plan was released in October 2021, in the new format. This included a change to the name of the zones within the District Plan to zones within the National Planning Standards where this could be done without formality.
34. The provisions of the Natural Open Space zone provide for enabling compatible activities and appropriate development, as well as protection from inappropriate activities and development while protecting purpose, amenity, and character of the site.
35. Compatible activities under NOSZ-P1 proposed in PC49 enable informal sports and passive recreation activities, conservation, and customary activities, which are of an appropriate scale within the zone that are compatible with the natural character and amenity values of the site.
36. Appropriate development under NOSZ-P2 proposed in PC49 provides for built development including buildings and structures, walking and cycling tracks, bridleways, parking areas and parks facilities.
37. The zoning of the Silverstream Spur is a key proposed provision for Variation 1. PC49 did not make any changes to the current split zoning of the site due to being considered out of scope of the plan change. Variation 1 was required to bring the Silverstream Spur into scope in line with the 12 submissions, supported by 49 further submissions, received requesting the rezoning.
38. It is evident from the number of submissions and further submissions received that the community feel strongly about the rezoning of the Silverstream Spur from the split zoning of General Rural and General Residential with a Residential Conservation Precinct to Natural Open Space. The underlying zoning will protect any natural character of the Silverstream Spur and provides greater certainty to the community over the ownership and any likely development to occur.
39. Future ownership, and use of the Silverstream Spur, is now more assured since the development and notification of PC49. This includes the conclusion of the Memorandum of Understanding (MoU) between the Upper Hutt City Council and the Guildford Timber Company. The MoU specified swapping the Silverstream Spur for land under Guildford Timber ownership which the Council would use for recreation purposes. The conclusion of the MoU

means that there is now greater certainty that Council will not sell or swap the Silverstream Spur land and that it will remain in public ownership.

### Growth Context

40. Upper Hutt was identified as having a future shortage of housing to provide for a growing and more diverse population in 2029. The 2022 Housing and Business Development Capacity Assessment (HBA) update forecasted population growth of 24,268 people requiring 10,458 extra dwellings between 2021 and 2051.
41. The Southern Growth Area (SGA) is identified within the Upper Hutt Land Use Strategy (2016) as a key strategic location for new growth within the next 10-30 years, the strategy also advises the Silverstream Spur is proposed to provide access to the SGA. The SGA is also included in the Wellington Regional Growth Framework (2021) as an identified Future Urban Area to provide for this predicted housing shortage. The Land Use strategy is also clear that a plan change will be required to *“rezone the land for residential use. A Plan Change would require a full assessment of all aspects of development of the land, as required by the Resource Management Act. At that stage, detailed consideration would be given to land development issues including (but not limited to) land stability, traffic/roading, servicing, design and layout including regard to visual and natural amenity values, earthworks, hydrology and staging. The impact of any development on adjacent land uses, taking into account their particular sensitivities (for example, the heritage and operational aspects of the Silver Stream Railway) would also be considered.”* (Upper Hutt Land Use Strategy (2016) p80).
42. A Southern Growth Area plan change has not yet been prepared as the development areas, infrastructure and effects assessments and housing typologies need to be prepared by the landowner to enable the development of this plan change. Council also supported an Expression of Interest application to the Governments Infrastructure Acceleration Fund for a road and infrastructure corridor on the Silverstream Spur to enable access to the Southern Growth Area. The application progressed to the Request for Proposal (RFP) stage but was not selected to proceed to the next stage.
43. The Resource Management Enabling Housing and other matters Amendment Act (Enabling Housing Act) has made amendments to the RMA focussing on introducing medium density development requirements for residential zones in Tier 1 local authorities allowing for intensification policies to be introduced into District Plans in a streamlined planning process. The Variation was notified on 5 October 2022, this was after to the notification of the Intensification Planning Instrument (IPI) to implement the Enabling Housing Act. The recent changes to residential densities in the city through the Intensification Planning Instrument indicate that the demand for housing can be met within existing urban areas for at least the short to medium term.

### Strategic context

44. The Upper Hutt City Open Space Strategy recognises the value and contribution open space makes towards the quality of life in Upper Hutt. The strategy is a long-term planning document that helps Council manage, plan, and develop parks, reserves and open spaces for the current and future needs of the community. Open space is land that is, or should be, set aside for public recreation, that the community has relatively free right of access to. The five strategic goals of the strategy are:

- Our open spaces are appropriately located.
- Our open spaces meet the needs of the community, and more people benefit from regularly using them.
- Our open spaces are accessible and well connected, making it easier for people to exercise, play, socialise and relax outdoors.
- Our open spaces are enhanced to provide benefits for the environment and recreational experience.
- Our open spaces contribute to community identity, vibrancy, and sense of place.

## 2.3 Statutory requirements

45. The Section 32 reports for the notified Open Spaces Plan Change 49 and Variation 1 contain a detailed analysis of the relevant higher order planning documents, strategic plans, and other statutory and legislative requirements which were considered through the development of the plan change. As these documents are discussed in detail within the Section 32 reports, they are not repeated here. However, since the Variation was notified in October 2022 there have been some changes to higher order documents and these are discussed below for completeness.

### National Policy Statement on Highly Productive Land (NPS-HPL)

46. The NPS-HPL came into effect on 17 October 2022 with one objective which is that “Highly productive land is protected for use in land-based primary production, both now and for future generations”. The nine policies in the NPS-HPL policies recognise and provide for highly productive land, identifying that it:
- is a finite resource;
  - requires integrated management;
  - should be prioritised for land based primary production; and
  - should be protected from inappropriate subdivision and development.
47. Part of the Silverstream Spur is proposed to be rezoned from General Rural to Natural Open Space but the land not classified as Land Use Capability class 1, 2 or 3.
48. Therefore, I do not consider that the NPS-HPL requires further consideration in the context of the proposed provisions in Variation 1.

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

49. The NPS-IB came into force on 4 August 2023, it included one objective:
- 2.1 Objective
- (1) The objective of this National Policy Statement is:
- (a) to maintain indigenous biodiversity across Aotearoa New Zealand so that there is at least no overall loss in indigenous biodiversity after the commencement date; and
  - (b) to achieve this:
    - (i) through recognising the mana of tangata whenua as kaitiaki of indigenous biodiversity; and
    - (ii) by recognising people and communities, including landowners, as stewards of indigenous biodiversity; and
    - (iii) by protecting and restoring indigenous biodiversity as necessary to achieve the overall maintenance of indigenous biodiversity; and



- (iv) while providing for the social, economic, and cultural wellbeing of people and communities now and in the future.
50. The policies seek to manage indigenous biodiversity in an integrated way that:
- takes into account the Treaty of Waitangi;
  - enables tangata whenua to exercise kaitiakitanga;
  - adopts a precautionary approach when considering adverse effects;
  - promotes resilience to the effects of climate change;
  - contributes to wellbeing; and
  - promotes restoration.
51. Local authorities must publicly notify a plan change within eight years of the commencement date of the NPS-IB, except for a plan change to identify SNA's, which must be notified within five years of commencement. Council will initiate a plan change to give full effect to the NPS-IB in due course, this will include a review of the existing draft Significant Natural Areas included in landowner consultation since 2020, However it is recognised that natural environment comprises a key component of the Silverstream Spur. The Variation includes an area of indigenous vegetation that has been assessed as having significant biodiversity values, whilst not fully giving effect to the NPS-IB this stage, provisions are proposed to recognise the need to protect indigenous biodiversity values on this site. The provisions recommended in Appendix B seek to manage activities so that they do not create adverse effects on indigenous biodiversity values on the Silverstream Spur.
52. Following the first four days of the hearing, Council has sought legal advice on the application of policy 3.8(6) of the NPS-IB and whether this has been triggered in Plan Change 49 or the Variation to Plan Change 49. This legal advice is attached at Appendix E. The legal advice considers that policy 3.8(6) of the NPS-IB has not been triggered for either Plan Change 49 or Variation 1 to Plan Change 49. However, the Silverstream Spur proposed area of significant indigenous vegetation in Variation 1 is considered to be a Significant Natural Area (SNA) for the purposes of the NPS-IB.
53. This is because, it comes under paragraph (b) of the definition of an 'SNA' in the NPS-IB, which states that "any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna". The definition of a 'plan' in the NPS-IB includes plan changes. This is relevant to the proposed provisions in Variation 1 to Plan Change 49 and is addressed in Topic 10 of this section 42a report.
54. It is recognised that clause 3.8(1) of the NPS-IB states that "Every territorial authority must undertake a district-wide assessment of the land in its district to identify areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as SNAs."
55. However, clause 3.8(5) states that "A territorial authority need not comply with subclause (1) in respect of any SNA referred to in paragraph (b) of the definition of SNA, (ie, an area already identified as an SNA at the commencement date) if, within four years after the commencement date, a suitably qualified ecologist engaged by the territorial authority confirms that the methodology originally used to identify the area as an SNA, and its application, is consistent with the assessment approach in Appendix 1."

56. Variation 1 to Plan Change 49 identified the Silverstream Spur as an area of significant natural vegetation and was notified on 5 October 2022 prior to the NPS-IB coming into effect on 4 August 2023. An updated assessment Silverstream Spur Natural Area has been provided by the ecologist in his expert evidence, and identifies the area in the revised extent shown in Appendix A as being significant against policy 23 of the RPS and Appendix 1 to the NPS-IB. The assessment by Mr Goldwater concurs with the original assessments of the Silverstream Spur but recommends a minor change in extent.

#### Wellington Regional Policy Statement

57. In Mr Goldwater's ecological evidence for Council, he has provided an assessment of the Silverstream Spur Natural Area against Policy 23 of the RPS, which requires that "District and regional plans shall identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values". NPS-IB and Policy 23 of the RPS requires that the significance of the vegetation is assessed against the following criteria:

- Representativeness;
- Rarity;
- Diversity;
- Ecological context; and
- Tangata Whenua Values

Further assessment and recommendations are made in topic 4 of this section 42a report following receipt of this evidence.

58. Policy 24 of the Regional Policy Statement requires that District Plans protect indigenous ecosystems and habitats with significant indigenous biodiversity values. Rule NOSZ-R22 in the Variation proposes that the removal of indigenous vegetation on the Silverstream Spur Natural Area is a restricted discretionary activity. I acknowledge that there are currently no matters of discretion in the notified Variation 1 to Plan Change 49 that relate to this rule. In topic 10 in this section 42A report I recommended amendments to address this omission, as well as submissions supporting protection of indigenous biodiversity and in light of legal advice received following the adjournment of the hearing.
59. I do not consider that policy 47 is relevant to a plan change, as this relates to methods of implementation relating to indigenous biodiversity, such as resource consents.

#### Wellington Regional Policy Statement Plan Change 1

60. Section 74(2)(a)(i) of the RMA requires that the Council have regard to any proposed regional policy statement when undertaking a plan change. Proposed Plan Change 1 to the Wellington Regional Policy Statement (WRPS-PC1) was publicly notified on 19 August 2022, which predates the notification of Variation 1 but was not addressed in detail in the Section 32 analysis for the Variation.
61. WRPS-PC1 gives effect to national direction including the NPS-UD and the NPS-FM. The proposed provisions represent a significant change from the operative WRPS and covers the following matters:



- Urban development;
- Indigenous ecosystems;
- Freshwater quality and Te Mana o Te Wai;
- Stormwater;
- Climate change; and
- Natural hazards

62. WRPS-PC1 is currently in the hearings process, and subject to change, therefore it is considered that little weight should be given to the proposed RPS at this stage. Additionally, as the provisions in variation 1 relate specifically to seeking to protect the values of the Silverstream Spur and manage adverse effects including some of the matters being addressed in WRPS-PC1. Council will give full effect to the WRPS-PC1 once it becomes operative to meet relevant timeframes identified in the plan change.

Te Tikanga Taiao o Te Upoko o Te Ika a Maui / Natural Resource Plan for the Wellington Region (NRP)<sup>[4]</sup>

63. The NRP became fully operative on 28 July 2023. It includes resource management provisions for air, land, water and coastal resources in the Wellington Region.

64. In particular, it focusses on freshwater management, natural character, natural hazards, water quality, air quality, sites with significant value, discharges to land and water, water allocation and coastal management.

65. I do not consider that the NRP provides matters of direction that are relevant to Variation 1. Proposed Change 1 to the Natural Resources Plan for the Wellington Region (PC1-NRP)<sup>[5]</sup>

66. Section 74(2)(a)(ii) of the RMA requires that the Council have regard to any proposed regional plan when undertaking a plan change. PC1-NRP was notified 30 October 2023 and focuses on:

- Management of freshwater and coastal water within Te Whanganui-a-Tara and Te Awarua-o Porirua and in doing so, it implements the National Policy Statement for Freshwater Management 2020 within those whaitua;
- Amendments to the air quality rules;
- Amendments to the beds of lakes and rivers rules;
- New sites with significant indigenous biodiversity value.

67. Given that PC1-NRP was notified on 30 October 2020, I have not had time to consider whether PC1-NRP includes matters of direction that would be relevant to this variation at the time of preparing this evidence.

National Adaptation Plan 2022 (NAP)<sup>[6]</sup> and Emissions Reduction Plan 2022 (ERP)<sup>[7]</sup>

<sup>[4]</sup> <https://www.gw.govt.nz/assets/Documents/2023/07/Natural-Resource-Plan-Operative-Version-2023-incl-maps-compressed.pdf>

<sup>[5]</sup> <https://www.gw.govt.nz/your-region/plans-policies-and-bylaws/updating-our-regional-policy-statement-and-natural-resources-plan/natural-resources-plan-2023-changes/>

<sup>[6]</sup> <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/adapting-to-climate-change/national-adaptation-plan/>

<sup>[7]</sup> <https://environment.govt.nz/what-government-is-doing/areas-of-work/climate-change/emissions-reduction-plan/>

68. Since 30 November 2022, section 74(2)(e) of the RMA requires that the Council have regard to any NAP when undertaking a plan change.
69. Additionally, Council is required under section 74(2)(d) to have regard to the ERP.
70. Together the NAP and ERP form a climate change adaptation and mitigation response for New Zealand.
71. *“The first National Adaptation Plan contains Government-led strategies, policies and proposals that will help New Zealanders adapt to the changing climate and its effects – so we can reduce the potential harm of climate change, as well as seize the opportunities that arise”.*
72. The ERP identifies the actions to achieve the long-term emission reductions targets for Aotearoa New Zealand to contribute to global efforts to limit temperature rise to 1.5°C above preindustrial levels.
73. I do not consider that the NAP and ERP provide matters of direction that are relevant to PC49.

## 2.4 Section 32AA

74. The RMA section 32AA requirements for undertaking and publishing further evaluations are shown below:

*(1) A further evaluation required under this Act—*

*(a) is required only for any changes that have been made to, or are proposed for, the proposal since the evaluation report for the proposal was completed (the changes); and*

*(b) must be undertaken in accordance with section 32(1) to (4); and*

*(c) must, despite paragraph (b) and section 32(1)(c), be undertaken at a level of detail that corresponds to the scale and significance of the changes; and*

*(d) must—*

*(i) be published in an evaluation report that is made available for public inspection at the same time as the approved proposal (in the case of a national policy statement or a New Zealand coastal policy statement or a national planning standard), or the decision on the proposal, is notified; or*

*(ii) be referred to in the decision-making record in sufficient detail to demonstrate that the further evaluation was undertaken in accordance with this section.*

*(2) To avoid doubt, an evaluation report does not have to be prepared if a further evaluation is undertaken in accordance with subsection (1)(d)(ii).*

75. A relevant S32AA evaluation of a corresponding level of detail to the scale and significance of all of the recommended amendments to proposed Variation 1 has been undertaken, with the evaluation at the end of each topic chapter and recommended amendments to Variation 1 in Appendix A of this report.

## **2.5 Procedural matters**

76. At the time of writing this report there has not been any pre-hearing conferences, clause 8AA meetings or expert witness conferencing in relation to submissions on this topic.

# **3. Consideration of submissions received**

## **3.1 Overview of submissions**

77. In total 94 submissions were received during the notification period for Variation 1, which ran from 5 October 2022 to 4 November 2022. Subsequently during the further submission stage, which ran from 8 February 2023 to 22 February 2023, 25 further submissions, with one incomplete further submission, were received. The 94 original submissions contained 194 separate submission points. This indicates that Variation 1 regarding the Silverstream Spur has significant public interest.

78. The submission points focus on the three main aspects of the proposal of Variation 1 (as outlined below). Variation 1 proposes to:

- Rezone the Silverstream Spur from a mix of General Rural and General Residential with a Residential Conservation Precinct to Natural Open Space.
- Protect identified Significant Natural Areas on the Silverstream Spur from development.
- Enable site-specific provisions for infrastructure, including a transport corridor.

79. Strong support was shown to rezone the Silverstream to Natural Open Space in both initial and further submissions. This proposal was opposed by one submission while another seeks an amendment to the rezoning.

80. The protection of identified Significant Natural Areas was also strongly supported through the submission and further submission process. This proposal was opposed by one submission.

81. The majority of submissions and further submissions requested the removal of the provisions of the site-specific provisions for infrastructure including a transport corridor. One submission supported this proposal with three submissions seeking an amendment and one supporting in part with an amendment sought.

82. Another strong theme in submissions was to have the Silverstream Spur identified as a Reserve under the Reserves Act 1977.

## **3.2 Structure of this report**

83. Given the number, nature, and extent of the submissions and further submissions received, issues addressed have been grouped by the key decisions sought by the submissions in relation to the proposed provisions. Some other common themes were also identified in submissions, and these have also been grouped together to be addressed by topic.

84. In accordance with Clause 10(3) of the First Schedule of the RMA, I have undertaken the following evaluation on both an issues and provisions-based approach, as opposed to a submission by submission approach.
85. Due to the number of submission points, this evaluation is generic only and may not contain specific recommendations on each submission point, but instead discusses the issues generally. This approach is consistent with Clause 10(2)(a) of Schedule 1 to the RMA. Specific recommendations on each submission and further submission point are contained in the table in Appendix B.
86. The following evaluation should be read in conjunction with the summary of submissions and the submissions themselves.
87. For each topic a review of the submissions received has been provided. An assessment section then follows which examines the submissions, what was notified, and provides a consideration of the decision sought. A recommendation is then made to the Hearings Panel on whether the submission should be accepted, accepted in-part, or rejected. Any amendments are then detailed, along with an associated analysis of the cost-benefits of the proposed amendments in the Section 32AA evaluation found in Appendix A.

### **3.3 Format for consideration of submissions**

88. For each identified topic, the consideration of submissions has been undertaken in the following format:
  - Matters raised by submissions;
  - Analysis;
  - Recommended decisions; and
  - Recommended amendments.

The recommended amendments to Variation 1 are set out in in Appendix A of this report where all text changes are shown in a consolidated manner.

### **3.4 Topics covered in this report**

89. The following topics have been identified to group together the decisions sought from the submissions in relation to the proposed provisions as well as other common themes raised through the submission process for Variation 1.
  - Topic 1: General
  - Topic 2: Out of scope submissions
  - Topic 3: Zoning of the Silverstream Spur
  - Topic 4: Ecology and Significant Natural Areas
  - Topic 5: Infrastructure including a transport corridor
  - Topic 6: Section 32 report
  - Topic 7: Landscapes

- Topic 8: Customary activities
- Topic 9: Sites and areas of significance to Māori
- Topic 10: Specific Amendments

## 4. Topic 1: General

### 4.1 Matters raised by submissions

90. Submission **[S1.1]** seeks the entire variation be adopted, this was supported by 5 further submissions, supported in part by 4 further submissions. Submission **[S15.1]** supported the natural open space zone and considered it made sense to provide for a road corridor to the southern growth area. This was supported in part by 7 further submissions and opposed by four further submissions opposed to the infrastructure corridor.
91. Submissions **[S10.1]** and **[S71.3]** seek for the Silverstream Spur to be protected as a Natural Open Space without the addition of a road corridor and to allow community led restoration with native planning to enhance biodiversity.
92. Submissions **[S27.1]**, **[S67.1]** and **[S68.1]** oppose the entire Variation 1 and seek the variation be deleted or abandoned. They strongly oppose the provisions for infrastructure including a transport corridor and would like to see the Spur replanted in native vegetation.
93. Submission **[S82.1]** seek for the ‘the variation be withdrawn/rejected and PC49 continue through the schedule 1 RMA process without affecting the Silverstream Spur; or the variation is subject to a comprehensive redrafting to address the matters outlined in the ‘overall position’ section of this submission and any alternative or consequential changes necessary to give effect to the relief sought in this submission be adopted.’ Submission **[S52.2]** seeks to provide public access for recreation and conservation activities.
94. The following submissions seek decisions and amendments that, although relevant to Variation 1, did not specifically fit into the broadly defined topics so have been included for analysis in this section.
95. Submissions **[S86.4]** and **[S88.6]** seek to ‘formally put together a stewardship group of interested parties (with no commercial interest in the Spur) to oversee a future for the Spur that is sympathetic to its neighbours and allows the Spur to continue to mature into an outstanding ecological asset for Upper Hutt’.
96. Submission **[S93.5]** stated that the ‘Open Space Strategy Objectives do not mention the protection of indigenous vegetation or Māori rights and cultural traditions associated with this Plan Variation’ and that they would be ‘happy to have a kōrero on how to improve and implement all Council documents so they can align strategically and support the District Plan provisions suggested.’

## 4.2 Analysis

97. Submission [S1.1] seeking adoption of the entire variation, support is noted and the submission will be considered alongside the submissions seeking more specific relief in other topics.
98. Submission [S10.1] seeking the Silverstream spur be protected without the infrastructure corridor and the Spur be enhanced through community led restoration. The support for protection is noted and the infrastructure corridor and restoration will be addressed in other topics.
99. Regarding submissions [S27.1], [S67.1], [S68.1] and [S82.1] who all opposed Variation 1 and seeks for it to be 'abandoned', 'deleted', 'withdrawn' or 'rejected'. The reason for Variation 1 was to bring the Silverstream Spur into scope and so, for the first time, the public could have their say on the future management and use of the land. To remove the entire Variation and the proposed provisions would mean the uncertainty of the future zoning and provisions for the Silverstream Spur would remain.
100. Plan Change 49 – Open Spaces and Variation 1 are part of the rolling review of the Operative District Plan that was released in 2004. Plan change 49 (and the variation) have been notified using the Schedule 1 process of the RMA. An important part of the Schedule 1 process is the opportunity for the community and interested parties to state their views through the submission and further submission process regarding the proposed provisions. This can lead to these provisions being amended accordingly to reflect the views of the community and interested parties including making amendments to the proposed provisions as a result of submissions. Therefore, these submissions are recommended to be rejected and Variation 1 is recommended to be retained with amendments in relation to other submissions.
101. Submission [S71.3] also seeks the Silverstream Spur be protected and enhanced as a Special Amenity Landscape. The consideration of Special Amenity Landscape is a planning option in relation to our Landscapes plan change and the Council has resolved in February 2023 not to include Special Amenity Landscapes in the Landscapes District Plan change when it is notified.
102. Submission [S93.5] does not seek any specific relief, instead it seeks further discussion. I note that Council staff are always happy to work in with our iwi partners in the development of Council documents as suggested.

## 4.3 Recommended decision

103. The following submission points are **rejected** for the reasons provided above:
  1. Doug Johnson [S27.1]
  2. Lynette Elizabeth Smith [S67.1]
  3. Leo Parnell Smith [S68.1] and
  4. The Guildford Timber Company Limited [S82.1]
104. That the following submission points are **accepted in part** for the reasons provided above.
  1. Mary Beth Taylor [S71.3]
  2. Logan McLean [S10.1]
  3. Phil Hancock [S52.2] and

105. That the following submission points are accepted for the reasons provided above

1. Bob Alkema **[S1.1]**
2. Lisa Clephane **[S15.1]**

106. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

#### 4.4 Recommended amendments

107. There are no recommended amendments as a result of these submissions.

## 5. Topic 2: Out of scope requests

### 5.1 Matters raised by submissions

108. A large number of submission points raised issues which are out of scope of the variation.

1. The submissions include **[S9.1]**, **[S10.1]**, **[S16.1]**, **[S22.1]**, **[S25.1]**, **[S32.1]**, **[S34.1]**, **[S35.1]**, **[S39.1]**, **[S42.1]**, **[S42.2]**, **[S45.1]**, **[S53.1]**, **[S59.1]**, **[S70.1]**, **[S71.1]**, **[S71.3]**, **[S72.1]**, **[S75.1]**, **[S77.1]**, **[S79.8]**, **[S84.2]**, **[S86.1]**, **[S86.4]**, **[S87.1]**, **[S88.3]**, **[S88.6]**, **[S89.1]**, **[S91.1]**, **[S91.2]**, **[S92.1]**, and **[S93.5]**.

109. These included requests for:

- a) signage identifying the unformed legal road from Kiln Street;
- b) making the Silverstream spur a reserve under the Reserves Act;
- c) removing pine trees from the Silverstream Spur;
- d) planting the Silverstream Spur in native trees;
- e) specific provisions for the development of the Southern Growth Area;
- f) identifying significant natural areas beyond the Silverstream Spur;
- g) provision of cycle paths and walkways;
- h) extension of proposed zoning to adjacent land; and
- i) stopping the unformed legal road from Kiln Street.

110. These submissions were supported by a large number of further submissions.

111. Submission **[S8.2]** seeks an 'answer to questions on Public Transport Rail commuter parking'. They stated that 'there has been insufficient disclosure on how the public transport and rail will be affected by potential future development and that there is already a lack of parking in Silverstream for commuters.' The consideration of access from Reynolds Bach Drive is addressed in section 8.

112. Regarding submission **[S64.2]**. Development of the Silverstream Spur in native planting is not a district planning matter. This could be addressed through a management plan for the Silverstream Spur.

## 5.2 Analysis

113. These submission points are identified as being out of scope of the variation as they either relate to additional land areas (adjacent road reserve, other Council land, other significant natural areas or the Southern Growth Area) or are not issues that are addressed by the District Plan. These requests either require a separate legal process under separate legislation (Land Transport Management Act or Reserves Act) or are management decisions for Council as a landowner.
114. Whether or not the Council seeks to gazette a reserve under the Reserves Act 1977 or remove the pines and replant with native species is outside of this district plan process. Once the decision for the zoning and provisions for the Silverstream Spur in the district plan has been made it may be appropriate, depending on the decision, to undertake the process of having the Silverstream Spur gazetted as a reserve and look at management of the land and adjacent Council land. However, these matters cannot be determined as part of this Variation.

## 5.3 Recommended decision

115. The following submission points are recommended to be **rejected**:
1. Craig Thorn [**S8.2**];
  2. Duncan Stuart [**S9.1**];
  3. Logan McLean [**S10.1**];
  4. Herenga ā Nuku/Outdoor Access Commission [**S16.1**];
  5. Greater Wellington Regional Council [**S19.2**];
  6. Jane Derbyshire [**S22.1**];
  7. Maurice Berrington [**S25.1**];
  8. Tom Halliburton [**S32.1**];
  9. John Durry [**S34.1**];
  10. Graham Bellamy [**S35.1**];
  11. Jennifer Durry [**S39.1**];
  12. Pat van Berkel [**S42.1**] and [**S42.2**];
  13. John Pepper [**S45.1**];
  14. Steven Robertson [**S53.1**];
  15. Nadine Ebbett [**S59.1**];
  16. Elizabeth Maria Christensen [**S64.2**]
  17. Katelin Hardgrave [**S70.1**];
  18. Mary Beth Taylor [**S71.1**] and [**S71.3**];
  19. Peter Ross [**S72.1**];
  20. Polly Forrest [**S75.1**];
  21. Tony Chad [**S77.1**];
  22. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [**S79.8**]
  23. Wayne Dolden [**S84.2**];
  24. Simon Edmonds [**S86.1**] and [**S86.4**];
  25. David Grant-Taylor [**S87.1**];
  26. Silver Stream Railway Incorporated [**S88.3**] and [**S88.6**];
  27. Lisa Marshall [**S89.1**];
  28. Save our Hills (Upper Hutt) [**S91.1**] and [**S91.2**];
  29. Rachel Stuart [**S92.1**]; and
  30. Ngāti Toa Rangitira [**S93.5**].



## 5.4 Recommended amendment

116. No recommended amendments to Variation 1.

# 6. Topic 3: Silverstream Spur Zoning

## 6.1 Matters raised by submissions

117. 68 of the 94 submissions received for Variation 1 seek the Silverstream Spur be rezoned as Natural Open Space supporting the proposed zoning. Other submissions also mentioned supporting the zoning change in their reasons provided for other topics. One submission opposed the proposed zoning while one other sought an amendment to the proposed zoning.

118. The following submissions support the proposed rezoning the Silverstream Spur as Natural Open Space:

[S5.1], [S6.1], [S7.1], [S9.1], [S10.1], [S13.1], [S17.1], [S20.1], [S21.1], [S22.1], [S23.1], [S24.1], [S28.1], [S31.1], [S32.1], [S33.1], [S35.1], [S37.1], [S38.1], [S39.1], [S40.1], [S41.1], [42.1], [S43.1], [S44.1], [S45.1], [S46.1], [S47.1], [S48.1], [S50.1], [S51.1], [S52.1], [S53.1], [S54.1], [S55.1], [S56.1], [S57.1], [S58.1], [S62.1], [S64.1], [S65.1], [S66.1], [S69.1], [S71.1], [S72.1], [S73.1], [S74.1], [S75.1], [S76.1], [S77.1], [S78.1], [S79.1], [S83.1], [S84.2], [S86.1], [S88.1], [S89.1], [S90.1], [S91.1], [S92.1], [S93.1], and [S94.1]

119. These submissions supporting were supported by most of the further submissions. See Appendix B for the details.

120. Reasons provided by submissions in support of rezoning the Silverstream Spur as Natural Open Space were detailed and varied. The points below cover some of the more general and consistent themes raised in submissions:

- The Spur will help protect and reinforce a natural east-west corridor across the southern end of Upper Hutt providing a natural corridor for migration of wildlife and birds in the area and an important link between other green spaces.
- The zoning will help preserve the character of the surrounding suburbs.
- Natural Open Spaces provide a valuable contribution to the wellbeing of the Upper Hutt community and should be protected for future generations.
- The Silverstream Spur is an iconic feature of Upper Hutt and could be further enhanced by the removal of the pine trees replanting in native vegetation to become an attractive, ecological area.
- The Silverstream Spur should be used for recreation, conservation, and customary purposes exclusively with an opportunity to provide walking and biking tracks and supporting recreational infrastructure.
- The Silverstream Spur defines the gateway to Upper Hutt.
- The Silverstream Spur will provide protection and conservation of natural character, indigenous vegetation, and ecological and landscape values.
- To strengthen its importance to Tangata Whenua and iwi in the area.

121. The following submissions were opposed to the rezoning of the Silverstream Spur to Natural Open Space. Submission [S18.1] opposed the rezoning and requested that the Spur zoning

remain the same or to zone the entire site as General Residential. They stated that ‘the land was once zoned for residential purposes and as the Hutt Valley population has grown the attitude towards building homes close to existing infrastructure has become more popular so the Silverstream Spur is an even more important solution to housing needs than ever before and will be more so in the future.’

122. Submission [S82.2] seeks an amendment to the proposed zoning and requested that ‘the General Residential Zone be retained over that portion of the land subject to that zoning in the Operative Plan and accept the proposed rezoning of that portion of the land zoned Rural Hill in the operative Plan to Natural Open Space zone, provided that appropriate policies and rules are included in the variation to efficiently and effectively enable construction and operation of a new collector road and associated services between Kiln Street and the Southern Growth Area, including associated earthworks and vegetation clearance.’
123. The options, that there is scope to consider based on the notified proposal and the submissions received, are restricted to those options outlined below:
- Rezone the Silverstream Spur as Natural Open Space
  - Retain the current split zoning of General Residential with a Conservation Precinct and General Rural.
  - Rezone the Silverstream Spur entirely as General Residential.
  - Retain the Residential Conservation (General Residential) zoning on part of the Spur and rezone the Rural Hill (General Rural) portion of the Silverstream Spur to Natural Open Space.

## 6.2 Analysis

124. Under the Operative District Plan, the Silverstream Spur is currently split zoned between General Rural and General Residential since the introduction of the National Planning Standards version in 2021. As part of the Intensification Planning Instrument the Medium Density Residential Standards must apply to the general residential zoned land.
125. Variation 1 has proposed to change the zoning of the entire Silverstream Spur to Natural Open Space in line with decisions requested by many submitters in the submission process for PC49.
126. The National Planning Standards provides a description of the Natural Open Space Zone as:
- ‘Areas where the natural environment is retained and activities, buildings and other structures are compatible with the characteristics of the zone’.*
127. The purpose of the Natural Open Space Zone, as proposed to be introduced into the Operative District Plan via plan change 49, is to allow for activities and development of an appropriate scale to occur in spaces where there is a strong natural character with associated ecological and landscape values. More detail on this zone is provided in the Section 32 analysis for Plan change 49.
128. Regarding submissions [S18.1] and [S82.2]. Having the Silverstream Spur zoned General Residential, either as full or split zoning, would allow for the site to be potentially developed for housing. Introduction of the IPI, and the Medium Density Residential Standards (MDRS), would enable higher density development to be a permitted activity with the zoning change to General Residential. The Council and the community have no interest in developing the

land for residential activities. Therefore, any form of residential zoning is considered inappropriate.

### 6.3 Recommended decision

129. The following submission is **rejected** for the reasons provided above:

- a. Silverstream Retreat – John Ross [**S18.1**]

130. The following submissions are **accepted in part** for the reasons provided above:

1. Jane Derbyshire [**S22.1**]
2. Tom Haliburton [**S32.1**]
3. Calvin Berg [**S33.1**]
4. Pat van Berkel [**S42.1**]
5. Heather Blissett [**S69.1**]
6. Mary Beth Taylor [**S71.1**]
7. Kate Hunter [**S76.1**]
8. Tony Chad [**S77.1**] and
9. The Guildford Timber Company Limited [**S82.2**]

131. The following submissions are **accepted** for the reasons provided above:

1. Lynda Joines [**S5.1**]
2. Stephen Butler [**S6.1**]
3. Helen Chapman [**S7.1**]
4. Duncan Stuart [**S9.1**]
5. Adam Ricketts [**S13.1**]
6. Kelsey Fly [**S17.1**]
7. Colin Rickerby [**S20.1**]
8. Michael Gray [**S21.1**]
9. John D O'Malley [**S23.1**]
10. Nancy Bramley-Thompson [**S24.1**]
11. Lance Hurly [**S28.1**]
12. W Gibson [**S31.1**]
13. Graham Bellamy [**S35.1**]
14. Cathy Price [**S37.1**]
15. Gerald and Carleen Bealing [**S38.1**]
16. Jennifer Durry [**S39.1**]
17. Stephen Bell [**S40.1**]
18. Bob McLellan [**S41.1**]
19. Heather Frances Beckman [**S43.1**]
20. Lynne McLellan [**S44.1**]
21. John Pepper [**S45.1**]
22. Chris Cosslett [**S46.1**]
23. Allan Sheppard [**S47.1**]
24. Donald Keith Skerman [**S48.1**]
25. Abbie Spiers [**S50.1**]
26. Derek Reeves [**S51.1**]
27. Phil Hancock [**S52.1**]
28. Steven Robertson [**S53.1**]
29. Suilva Fay McIntyre [**S54.1**]
30. Jason Durry [**S55.1**]
31. Quintin Towler [**S56.1**]

- 32. Christian Woods [S57.1]
- 33. Marie Harris [S58.1]
- 34. Martin E McGlue [S62.1]
- 35. Elizabeth Maria Christensen [S64.1]
- 36. Janice Nancy Carey [S65.1]
- 37. Anthony Carey [S66.1]
- 38. Shayne Fairbrother [S73.1]
- 39. Royal Forest and Bird Protection Society Inc [S74.1]
- 40. Polly Forrest [S75.1]
- 41. Caleb Scott [S78.1]
- 42. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.1]
- 43. Pam Hurly [S83.1]
- 44. Wayne Dolden [S84.2]
- 45. Simon Edmonds [S86.1]
- 46. Silver Stream Railway Incorporated [S88.1]
- 47. Lisa Marshall [S89.1]
- 48. Rhys Lloyd [S90.1]
- 49. Save our Hills (Upper Hutt) [S91.1]
- 50. Rachel Stuart [S92.1]
- 51. Ngāti Toa [S93.1] and
- 52. Jennifer Ann Dolton [S94.1]

132. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.
133. Overall, I recommend accepting the proposal to zone the Silverstream Spur as Natural Open Space. A change of the underlying zoning to reflect the natural character of the site is considered appropriate based on the certainty that the site is intended to remain in public ownership, will not be sold or swapped, and is not proposed for residential development. Although the site does not currently have adequate access for the public, which is an important part of the Natural Open Space Zone, it does have potential access points that could be developed in the future.

### **6.3 Recommended amendment**

134. No recommended amendments to Variation 1.

## **7. Topic 4: Significant Natural Areas**

### **7.1 Matters raised by submissions**

135. Strong support, with 42 submissions, among the 94 submissions received seeking the decision that identified Significant Natural Areas on the Silverstream Spur be protected from development in line with what is been proposed in Variation 1. One submission was opposed to these provisions (which has been analysed under Topic 10).

136. The following submissions support the protection of identified Significant Natural Areas on the Silverstream Spur or general biodiversity protection:

[S19.1], [S23.3], [26.1], [S28.3], [S31.1], [S35.3], [S41.2], [S42.2], [S45.1], [S48.3], [S50.2], [51.1], [52.1], [S53.1], [S55.3], [S56.1], [S58.2], [S62.1], [S64.2], [S71.1], [S74.8], [S79.8], [S83.1], [S86.3], [S87.1], [S88.4], [S90.3] and [S91.2].

137. These submissions were generally supported by many further submissions.

138. Reasons provided by submissions to support the proposed provisions to protect identified Significant Natural Areas on the Silverstream Spur from development were detailed and varied. The points below cover some of the more general and consistent themes raised by these submissions:

- Protection and enhancement of the Significant Natural Areas will benefit native flora and fauna and biodiversity in the area.
- Protection and enhancement of the Significant Natural Areas will provide an important ecological corridor for birds linking both sides of the valley helping to protect all native bird species.
- A significant feature of Upper Hutt is the beauty of native bush on the hills that surround it which should be protected for future generations.
- With the view of Climate Change protection of Significant Natural Areas will enhance the carbon absorption within Upper Hutt.
- Protection from development will avoid fragmentation and loss of buffering or connectivity within the Significant Natural Areas and between other indigenous habitats.
- Significant Natural Areas should be continuous to maintain integrity of the flow of natural biota.
- This taonga needs to be preserved for current and future generations.

139. The following submissions were all in support of the proposed provisions and seeks amendments in relations to these provisions.

140. Submission [S19.1] supports the protection of identified Significant Natural Areas as 'this is consistent with the Regional Policy Statement (RPS) Objective 16 and Policies 23 and 24.' They state 'that the District Plan does not currently give effect to RPS Policies 23-28 to identify and protect significant indigenous biodiversity values and landscapes. Given the delay with the Tiaki Taiao Plan Change 48 for Significant Natural Areas and Landscapes, there is currently limited protection of indigenous biodiversity in the District Plan beyond indigenous vegetation clearance provisions.'

141. Submission [S50.2] seeks for the provisions to 'protect the Silverstream Spur from all forms of development, infrastructure or roading, and not just from the vaguely worded 'development'. They stated that 'activities and installations involved with development are incompatible with adequate protection of our valuable Significant Natural Areas.' They added that 'the Silverstream Spur is an excellent size and shape to comfortably protect the high value habitat of the SNAs, and in time provide a buffer of native habitat around these areas.'

142. Submission [S64.2] seeks to 'protect identified Significant Natural Areas on the Silverstream Spur from development, but only have the only development as native planting'.

143. Submission [S42.2] seeks to 'extend the Significant Natural Area to include the 6 recovering areas of native bush and additionally, protect the extended Significant Natural Area from development.' They stated that 'these areas should not be considered in isolation but parts of connected areas that within a short time will be one whole native bush area. Also, to acknowledge the strategic importance of the Silverstream Spur as part of the bird/wildlife corridor from the Wainuiomata Mainland Island to Keith George Memorial Park (which links to Zealandia and Akatarawa).'
144. Extension of the identified Significant Natural Areas was also supported by submission [S91.2] who seek for 'the entire 35ha Silverstream Spur site to be included and subsequently protected from development.' They added that 'they would like to see the entire Spur cleared of pines and replanted in native plants and trees, as an important corridor for birds linking both sides of the Hutt Valley.'
145. Submissions [S55.3], [S58.2], [S87.1], [S90.3] seek for the Significant Natural Area map to be corrected to include all areas of native vegetation based on a detailed site analysis. Submission [S88.4] added 'to correct errors and short comings with the Significant Natural Areas identified in Appendix 3 figure 5 of the PC49 Section 32 report and undertake to ensure all of these areas are incorporated in to the Silverstream Spur Significant Natural Area overlay.'
146. Submissions [S74.8] and [S79.8] seek to 'clearly identify on the map the Significant Natural Area within the Natural Open Space Zone for Silverstream Spur. Include labelling or a key to the map.'
147. Submission [S86.3] seeks 'to review and correct errors and short comings with the Significant Natural Areas identified in Appendix 3 figure 5 of the PC49 Section 32 report and undertake to ensure all these areas are incorporated into the Silverstream Spur Significant Natural Area overlay. The definition of the extents of current SNA areas on the Spur should not limit the areas so tightly to preclude adjacent areas that are currently transitioning to this ecological classification. It is now clear that regeneration is occurring rapidly, and the boundaries of the SNA areas are generally expanding over time from inside the gullies and over the remaining Spur topography.'
148. Submission point [S82.2] seeks to delete the spatial notation labelled UH070 shown on the proposed rezoning and [S82.4] and stated that 'the Council's evidence base does not support the Spur (or part of the Spur) being identified as a significant natural area, nor has such an area been accurately identified in Variation 1. They added that a mixture of terminology used in relation to the concept of natural areas make the provisions very difficult to understand.' The analysis and decision for [S82.4] has been included in Topic 10 Specific Amendments.
149. Submission [S76.1] requested that 'the ecological values of the Spur are investigated as part of the larger conservation mosaic of the lower North Island and is given sufficient protection.'

## 7.2 Analysis

150. Section 6(b) and 6(c) of the RMA requires the protection of outstanding natural features and landscapes and areas of significant indigenous vegetation as a matter of national importance. Since 2013 policies in the Greater Wellington Regional Councils Regional Policy Statement (RPS) have required all city councils to identify and protect these areas. Policy 23

of the Regional Policy Statement for the Wellington region states: 'District and regional plans shall identify and evaluate indigenous ecosystems and habitats with significant indigenous biodiversity values.'

151. Proposed Plan Change 48 – Tiaki Taiao - Natural Features & Landscapes, of the Upper Hutt District Plan, involved identifying important natural landscapes, features, or areas of land with special wildlife, plants, and trees that are native and important to the biodiversity of our city.
152. Upper Hutt City Council worked with ecological specialists Wildland Consultants Ltd, to complete a report and mapping of Upper Hutt's threatened indigenous flora and fauna based on Department of Conservation classification. The report produced in October 2018 identified areas on the Silverstream Spur as Significant Natural Areas. This was completed through a desk top study.
153. Further to the initial report Wildlands conducted two site visits in November 2020, from the Silverstream Spur site, and June 2022, from the Silver Stream Railway, to assess any potential additional Significant Natural Areas on the Silverstream Spur. Adjustments were made to incorporate these newly identified areas (as shown in Figure 2 below). The Wildlands field notes from those two site visits were attached to the Section 32 report for Variation 1. [More detailed field notes were provided to the panel and published on the UHCC website as an attachment to minute 9 of the hearing panel in February 2024.](#)
154. [A further site visit was undertaken by Wildlands in December 2023. The notes from this visit and the routes taken Wildlands in undertaking their assessment are provided as an appendix to the further ecological expert evidence provided by Wildlands and published on the UHCC website on 8 March 2024.](#)
155. The assessments undertaken by Wildlands Consultants use the same methodology as across the Wellington Region for Significant natural Areas to be included in District Plans. The criteria for these assessments is consistent with the district wide assessments for Draft SNAs. Further assessments will need to be carried out to fully implement the NPS-IB in Upper Hutt in a future plan change.



Figure 3 – Combined extent of SNA for the Silverstream Spur with magenta outline showing extent of significant indigenous vegetation identified in the 2020 site visit and white outline showing additional extent from 2022 site visit. The updated combined area, within the Silverstream Spur, is recommended to be identified as the “Silverstream Spur Natural Area” on the planning maps in Appendix A4 and the ecological expert recommends removing half of the area shown in white above.

156. The expert ecological evidence provides an updated assessment of the Silverstream Spur Natural Area against the significance policies in the NPS-IB and Policy 23 of the RPS. In considering the nature and extent of the Silverstream Spur Natural Area the expert ecologist considers that the proposed extent shown in the map in Appendix A meets the significance tests in policy 23 of the RPS and the key assessment principles of the Ecological context criterion in the NPS-IB.
157. This is because, it contains significant indigenous vegetation including “kamahi-broadleaved species forest, which is poorly represented in existing protected areas” and vegetation that “Provides a corridor or ‘stepping stone’ habitat for birds crossing the Hutt Valley”. The evidence of Mr Goldwater notes that, whilst some areas such the area of ponga-mamaku treefernland would not necessarily meet the Ecological context criterion under both the RPS and NPS-IB, they do provide:
- a buffering function; and
  - a contiguous east-west linkage between the two beech-kamahi forest remnants.
158. In his evidence, Mr Goldwater does recommend reducing the extent of the Natural Area by removing the gully to the North West of the Silverstream Spur Natural Area. His evidence notes that the “gully is very narrow, sparsely vegetated, and possibly affected by pest plant species. It also provides little in the way of buffering for the adjacent area of indigenous vegetation”. The updated map at Appendix A, therefore, shows a reduction in the extent of



the Silverstream Spur Natural Area when compared to what was notified. For ease of reference both the notified and recommended amendments maps are shown in Appendix A.

159. Given the legal advice at Appendix E as summarised in paragraphs 52 to 56 of this section 42a report, I recommend that the Silverstream Spur is recognised as a Significant Natural Area and should be identified as such in the planning maps and in the provisions. In doing so I acknowledge that the provisions of the NPS-IB are relevant in the context of the Silverstream Spur Significant Natural Area and, in particular, policy 7 and clause 3.10.
160. Noting that rule NOSZ-22 did not include matters over which Council should restrict its discretion, this needs to be addressed as a consequence of recommending that this rule is amended from being a discretionary to a restricted discretionary activity. Recommended amendments are proposed in topic 10 and at Appendix A. These amendments should provide appropriate protection of the Silverstream Spur Significant Natural Area until Council initiates plan change to fully give effect to the NPS-IB.
161. Regarding submissions [S35.3] and [S50.2]. The intent to limit development on the Silverstream Spur is supported in principle but is not particularly practical and it cannot be guaranteed that no development will take place. The proposed provisions in Variation 1 are to protect identified Significant Natural Areas on the Silverstream Spur from development.
162. Regarding submission [S64.2] support for protection is noted but requiring Silverstream Spur to be covered in native planting is not a district planning matter so is out of scope of the variation.
163. The identification and mapping of Significant Natural Areas on the Silverstream Spur requested by submissions [S42.2], [S55.3], [S58.2], [S76.1], [S79.8], [S86.3], [S87.1], [S90.3] and [S91.2] has already been carried out and included in the Variation. This comprised a desk top study and ~~two~~ three site visits completed by Wildland Consultants Ltd. they assessed the indigenous flora and fauna on the Silverstream Spur from different available access points from private land and public views from roads. The purpose was to support identification and values of Significant Natural Areas for protection in the district plan. It is important to understand that this was a time and place assessment, and these areas will continue to regenerate and change over time. I consider this level of assessment is appropriate for a plan change stage. A detailed assessment would be required at a resource consent level. The proposed provisions would ensure appropriate assessment with the effects of development proposal funded by the applicant.
164. I acknowledge that the map provided with the Variation at notification lacked a clear legend showing the Silverstream Spur Natural Area so submission [S74.8] request to amend the map to include a key for the identified Significant Areas is considered appropriate and recommended to be accepted. The map provided in the Section 32 report (repeated above) shows area outside the Spur however as the scope of this Variation is limited to zoning and provisions for the Silverstream Spur the recommended map in Appendix B only relates to the Silverstream Spur.

### 7.3 Recommended decision

165. The following submissions are **rejected** for the reasons provided above:
  1. David Grant-Taylor [S87.1]
  2. Silver Stream Railway Incorporated [S88.4]

2. Kate Hunter [S76.1]
3. Guildford Timber Company [S82.2] and [S82.4] and
4. ~~Rhys Lloyd [S90.3]~~

166. The following submissions are **accepted in part** for the reasons provided above:

1. Ian Price [S26.1]
2. Graham Bellamy [S35.3]
3. Pat van Berkel [S42.2]
4. John Pepper [S45.1]
5. Donald Keith Skerman [S48.3]
6. Abbie Spiers [S50.2]
7. Derek Reeves [S51.1]
8. Phil Hancock [S52.1]
9. Jason Durry [S55.3]
10. Quintin Towler [S56.1]
11. Marie Harris [S58.2]
12. Elizabeth Maria Christensen [S64.2]
13. Mary Beth Taylor [S71.1]
14. Royal Forest and Bird Protection Society Inc [S74.8]
15. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.8]
16. Simon Edmonds [S86.3]
17. [Silver Stream Railway Incorporated \[S88.4\]](#)
18. [Rhys Lloyd \[S90.3\]](#)
19. Save our Hills (Upper Hutt) Incorporated (SOH) [S91.2] and [S91.4]

167. The following submissions are **accepted** for the reasons provided above:

1. Greater Wellington Regional Council [S19.1]
2. John D O'Malley [S23.3]
3. W Gibson [S31.1]
4. Lance Hurly [S28.3]
5. Bob McLellan [S41.2]
6. Steven Robertson [S53.1]
7. Martin McGlue [S62.1] and
8. Pam Hurley [S83.1],

168. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

169. Overall, I recommend retaining the identification and protection of the Silverstream Spur Natural Areas shown on the [new map provided as part of the expert ecological evidence](#). The identification and mapping of natural areas on the Silverstream Spur is considered appropriate at the plan change level. It is accepted that these areas will continue to regenerate and improve so a more detailed assessment of any vegetation to be modified is needed at the resource consent level. This would take into consideration the effects of any proposal for development on the indigenous vegetation.

## 7.4 Recommended amendment

170. ~~The only amendment is to the To~~ name the area identified which has significant natural values clearly on the map [as a Significant Natural Area and amendments to the extent of the Silverstream Spur Significant Natural Area](#). This is recommended to be identified on the Map as the “Silverstream Spur Significant Natural Area” as shown in Appendixes [A and D](#)

## 8. Topic 5: Infrastructure including a transport corridor

### 8.1 Matters raised by submissions

171. The provisions to provide infrastructure including a transport corridor was opposed by 72 of the 94 submissions through their decision sought. One submission supported the provisions with three submissions seeking an amendment. One submission supported the provisions in part seeking an amendment which has been analysed under topic 10.
172. The following submissions opposed the provisions for infrastructure including a transport corridor on the Silverstream Spur:
- [S5.2], [S6.2], [2], [S9.2], [S10.1], [S11.1], [S12.1], [S14.1], [S17.2], [S20.2], [S22.1], [S23.2], [S24.2], [S26.2], [S28.2], [S29.1], [S30.1], [S32.1], [S34.1], [S35.2], [S36.1], [S37.2], [S38.1], [S38.2], [S39.2], [S40.2], [S41.3], [S42.3], [S43.2], [S44.2], [S45.2], [S46.2], [S48.2], [S49.1], [S50.3], [S51.2], [S53.2], [S55.2], [S56.2], [S57.2], [S58.3], [S59.1], [S60.1], [S61.1], [S62.2], [S63.1], [S64.3], [S69.2], [S70.2], [S71.2], [S72.1], [S73.2], [S75.2], [S76.2], [S77.2], [S78.2], [S80.1], [S81.1], [S83.2], [S84.1], [S85.1], [S86.2], [S87.2], [S88.2], [S89.2], [S90.2], [S91.4], [S92.2], and [S94.2]
173. This was strongly supported through further submissions received supporting the submission points opposing the provisions for infrastructure including a transport corridor on the Silverstream Spur.
174. Generally, these submissions were not opposed to having greater accessibility to the Silverstream Spur for recreation, conservation, and customary purposes but they were opposed to the provisions for the infrastructure and transport corridor. It was suggested that providing walking and biking tracks and supporting recreational infrastructure would be sufficient for access for these reasons and the proposed infrastructure provisions were primarily to access the Southern Growth Area.
175. Reasons provided by submissions opposed to the provision for infrastructure including a transport corridor, were detailed, and varied. The points below cover some of the more general and consistent themes raised by these submissions:
- Maintaining the Silverstream Spur as a Natural Open Space is important both ecologically and to preserve the character of the surrounding suburbs.
  - A road corridor on Natural Open Space is contrary to the definition of the Natural Open Space Zone and against the purpose of Significant Natural Areas.
  - Council have not received a design of such a road and where it will be situated from a developer.
  - To maintain a gradient no steeper than 1 in 8 will require a long windy road with a lot of earthworks which will impact the Natural Open Space and Significant Natural Areas.

- Housing development will create immense traffic congestion and parking and park and ride pressure around Silverstream.
- Increased run off from the road impacting surrounding properties.
- Presence of a busy, noisy road through an area of otherwise quiet forest would impact negatively on the enjoyment of the forest by recreational users.
- The Silverstream Spur is not 'critical' to enable access to the Southern Growth Area, there are ample alternative options for access.
- The community have not asked for roading to be able to access this area for recreation and walking and cycling tracks are sufficient.
- Any development would destroy the habitats and migration corridors of several protected and endangered species.
- Splitting the natural Spur and creating 'communities' of wildlife which may have an impact on their breeding and safety.
- The edge effects from cutting the Spur in two, storm water and erosion possibilities together with the increased pests, cats, dogs, mustelids gaining access mean yet more fragmentation of our iconic landscape.
- The entire area seems to be covered by the recently distributed PC47 for Natural Hazards, specifically high and unstable slopes with no geological report to identify whether the Spur is suitable for any development.

176. The following submissions as well as being opposed to the provisions seek amendments in relation to these proposed provisions.

177. Submission **[S14.1]** seeks amendment to 'provide detailed planning, dimensions and maps showing the access to the Silverstream Spur and the transport corridor including who would be able to use this transport corridor and for what purposes would it be used. Otherwise remove all wording regarding a transport corridor and potential future access to the Southern Growth Area from the variation.'

178. Submission **[S19.2]** seeks to 'ensure the provision for future growth in the Southern Growth Area, and access to it through the Silverstream Spur, has regard to Proposed RPS Change 1 and provides for a well-functioning urban environment. This should include providing for public transport and multi-modal and low/zero-carbon transport options along the proposed transport corridor. Amendments to the provisions providing for this transport corridor may be appropriate to signal multi-modal transport connections.'

179. Submission **[S42.3]** seek to 'remove transport provisions, stop (in the legal sense) the unformed road from Kiln Street, and extend this area as part of the Spur.'

180. Submission **[S48.2]** seek the decision to 'ensure that the land is protected from the construction of any infrastructure on this land apart from walking and cycling tracks' and 'ensure that any walking or cycling tracks are built in a way that ensures that they will function in a sustainable manner and not increase erosion or other environmental degradation'. Submission **[S48.3]** seeks that 'only walking and cycle paths should be permitted on any part of the land, not just areas that are judged to already be Significant Natural Areas.'

181. Submissions **[S52.2]** and **[S91.4]** opposed the provisions and seek to 'provide access for recreation, conservation, and customary purposes only.' This was raised by other submissions through their reasons provided on other topics. **[S91.4]** stated that 'walking and cycling tracks is all that is required and does not need a transport corridor or infrastructure.'

182. Submission [S63.1] seek that 'the Silverstream Spur remains as is and not become a housing area with a road and associated utilities with housing and roading'. They stated that this 'would threaten the Silver Stream Heritage Railway with the extra stormwater runoff and disturbance to the land.'
183. Submissions [S71.2] and [S77.2] seek 'the creation of public access vis Sylvan Way, creating tracks designed for good accessibility for a range of ages and abilities and basic amenities like toilets, water, and benches.'
184. Submission [S91.3] opposed the site specific provisions including a transport corridor and seek to 'not provide potential future access to the Southern Growth Area through the Silverstream Spur in this Public Plan Change 49 Variation 1. Any access for opening up the proposed Guildford Timber Company land for development should be via a Private Plan Change.' Submissions [S23.2], [S35.2] and [S87.2] also opposed the provisions for infrastructure including a transport corridor to access the Southern Growth Area.
185. Submissions [S76.2] and [S89.2] seek to investigate alternative access opportunities. [S76.2] stated that 'a road is not the only way to make the Spur accessible to recreational users and indeed would be detrimental to its ecology and indeed could be considered contrary to OSRZ-02'. Submission [S89.2] stated 'these provisions would need to traverse land already identified as Significant Natural Area which is orientated east to west across the Silverstream Spur'.
186. Submissions [S2.1], [S4.1] and [S8.1] seek that Reynolds Bach Drive be considered as an option to access the Southern Growth Area and suggested that Reynolds Bach Drive would be a preferable option. Submission [S80.1] was opposed to the provision but supported Reynolds Bach Drive as an option in their reasons provided. Reasons provided by these submissions included:
- It can be more easily developed as a primary access road.
  - It will not add to the already congested roads around Silverstream.
  - Indigenous vegetation will be irretrievably lost if access is made through extending Kiln Street.
  - It is less likely to be seen and may avoid much of the Silverstream Spur area that has iconic properties.
187. The following Submissions were supportive or supportive in part to the site-specific provisions of enabling infrastructure including a transport corridor.
188. Submission [S3.1] seeks the decision to 'retain the variation as it currently reads and do not amend to remove future access through the Silverstream Spur to any future residential development on the hills around Pinehaven' stating that:
- This is the most direct connectivity to arterial Eastern Hutt Road and SH2 for much needed residential development opportunities.
  - This is an easier road access to the Silverstream Spur areas which will enable a wider diversity of people to experience the flora and fauna it contains.
  - Without access to the Southern Growth Area through Silverstream Spur, much needed residential development opportunities will be lost or delayed.
  - Adding access only through other existing roads would increase traffic volumes through more residential streets.
  - Other areas of Pinehaven and Silverstream have not suffered loss of biodiversity from having roading in and around them.

189. Submission [S15.1] considered in their reason stated that ‘it makes sense to put a road through the Spur to give access to the Southern Growth Area.’
190. Submission [S82.3] supported the provisions in part seeking amendments. They stated that ‘a new collector road would enable the construction of substantial new community water supply assets to the overall benefit of the City’s resilience and service levels’ and ‘will also facilitate enhancements to the safe, efficient function of the transport network and in particular, it will afford a safer route for the transport of materials from retiring forestry plantations, away from more constrained parts of the network’. This submission point has been analysed under topic 10.

## 8.2 Analysis

191. Many submissions are seeking to remove any infrastructure corridor from the Spur and retain it for recreational activities only. This outcome would retain the Silverstream Spur for recreation but not enable public access to the site without destroying large areas of indigenous vegetation on the adjacent legal road corridor to gain access to the Spur.
192. The Spur has very limited current access to formed legal road (from Reynolds Bach Road) over a very short length of the road adjacent to the Silver Stream Railway. For any development, including native planting, provision and maintenance of walking or cycling tracks and the removal of pine trees, vehicular access is required.
193. As the Spur is a prominent landform with steep sides and large areas of indigenous vegetation any road or other infrastructure will need to be carefully designed to fit the location.
194. The Southern Growth Area is identified as a future growth area for Upper Hutt in the Councils’ Land Use Strategy (2016) in terms of delivering greenfield development for Upper Hutt. The delivery of development on the Southern Growth Area has been linked with the access through the Silverstream Spur.
195. Zoning of the Silverstream Spur as Natural Open Space, without recognition of the link to the Southern Growth Area would make a consenting pathway for such development difficult to achieve. The provisions for the Natural Open Space zone (proposed in Plan Change 49) are focused on maintaining and protecting the natural character of the zone while allowing for activities and development of a suitable scale and aligned with the purpose of the zone. Submissions have expressed that to enable provisions for infrastructure including a transport corridor are at odds with these policies for the Natural Open Space zone.
196. Subsequently the proposed provisions, of a roading corridor and associated infrastructure, were included in Variation 1 to enable this as a potential option to provide access to this land for development. It was considered that while the rezoning of the Silverstream Spur was appropriate, the introduction of provisions to allow for the necessary infrastructure to provide access was also required to future proof the Southern Growth Area. [I do, however, recommend some further amendments to rule NOSZ-R15 under topic 10 to address some of the concerns of submitters and issues raised in the expert ecological evidence.](#)
197. The proposed provisions in Variation 1 only enable development of infrastructure including a transport corridor. Any plans to develop the Southern Growth Area and access would be

required to go through the resource consent process. Effects would be addressed at this stage.

198. The Silverstream Spur is currently not adequately accessible to the public for recreation, conservation, and customary purposes. The provision of infrastructure including a transport corridor would provide this. Submissions have strongly suggested that cycle and walking tracks will be sufficient to provide for these purposes and the transport corridor is primarily for access to the SGA.
199. Regarding submissions [S14.1], [S19.2], [S48.2] and [S91.3]. seeking detailed planning, dimensions and maps showing the access to the Silverstream Spur and the transport corridor these have not been provided at this stage as no resource consent has been received to develop the SGA, such plans are not relevant to this variation as it is to set a framework for the Silverstream Spur and not the ultimate development of the Southern Growth area. As requested in [S23.2], [S35.2], and [S87.2] part of the future Southern Growth development process would involve extensive evidence to be provided by the developer which would include provision of infrastructure, transport, and traffic.
200. We are not proposing a transport corridor in Variation 1 but enabling the potential for one through the resource consent process at a future time. If a resource application is applied for then, at this stage, it could be assessed regarding Proposed RPS Change 1 to provide for a well-functioning urban environment. Development of walking and cycle tracks requested by [S52.2] and [S91.4] are not a district plan matter but could be addressed through a management plan for the Silverstream Spur. Public access would not be easy, but the Silverstream Spur does have potential access points.
201. Regarding submission [S63.1]. Now that the Silverstream Spur is to remain in public ownership and no longer subject to the MoU with the Guildford Timber Company, it is not considered to be an appropriate site for housing development. The proposed rezoning of the Silverstream Spur to Natural Open Space would also provide for protection from development of housing on the Silverstream Spur.
202. Regarding submissions [S71.2] and [S77.2]. The matters raised in this submission [S71.2] are not district plan matters and would be dealt with through a management plan for the Silverstream Spur. Similarly, the majority of point raised in [S77.2] are not district plan matters although the rezoning of the Silverstream Spur to Natural Open Space is agreed with as is the protection of identified Significant Natural Areas.
203. Regarding submissions [S76.2] and [S89.2]. Alternative access options to the SGA could be investigated if an application is submitted to develop the SGA. Any future development plans for SGA would be required to go through the resource consent process. Part of this process would involve extensive evidence to be provided by the developer, at their cost, which would include provision of infrastructure, transport, and traffic. The proposed provisions of Variation 1 are to enable development of infrastructure including a transport corridor through the Silverstream Spur and further investigation may find more appropriate means of gaining access the SGA.
204. Regarding submissions [S2.1], [S4.1], [S8.1] and [S80.1]. As outlined in paragraph above, Reynolds Bach Drive is a potential access point for the Southern Growth Area. Reynolds Bach Drive is within the Lower Hutt District so any investigation of this as potential access to the SGA would need to go through the Hutt City Council if an application is received to develop

this land. Submission [S2.1] also requested to make sure every effort is made to ‘mitigate the visual effects of the Reynolds Bach Drive access from State Highway 2, Fergusson Drive, and Eastern Hutt Rd which could only be within the Hutt City Plan.’

205. Regarding submissions [S3.1] and [S15.1] who support the proposed provisions in Variation 1. The rezoning of the Silverstream Spur to Natural Open Space is agreed with as is the protection of identified Significant Natural Areas. It is also agreed that the opportunity for future residential development should be retained.

### 8.3 Recommended decision

206. The following submissions are **rejected** for the reasons provided above:

1. Doug Fauchelle [S2.1]
2. Caroline Woollams [S4.1]
3. Lynda Joines [S5.2]
4. Stephen Butler [S6.2]
5. Helen Chapman [S7.2]
6. Craig Thorn [S8.1]
7. Duncan Stuart [S9.2]
8. Carl Leenders [S11.1]
9. Jonathan Board [S12.1]
10. Howie Rait [S14.1]
11. Kelsey Fly [S17.2]
12. Colin Rickerby [S20.2]
13. Michael Gray [S21.2]
14. John D O’Malley [S23.2]
15. Nancy Bramley-Thompson [S24.2]
16. Ian Price [S26.2]
17. Lance Hurly [S28.2]
18. Peter Zajac [S29.1]
19. Laura Johnston [S30.1]
20. Tom Haliburton [S32.1]
21. John Durry [S34.1]
22. Graham Bellamy [S35.2]
23. Chris and Julie Manu [S36.1]
24. Cathy Price [S37.2]
25. Gerald and Carleen Bealing [S38.1] and [S38.2]
26. Jennifer Durry [S39.2]
27. Stephen Bell [S40.2]
28. Bob McLellan [S41.3]
29. Pat van Berkel [S42.3]
30. Heather Frances Beckman [S43.2]
31. Lynne McLellan [S44.2]
32. John Pepper [S45.2]
33. Chris Cosslett [S46.2]
34. Rick Wheeler [S49.1]
35. Abbie Spiers [S50.3]
36. Derek Reeves [S51.2]
37. Steven Robertson [S53.2]
38. Jason Durry [S55.2]



39. Quintin Towler [S56.2]
40. Christian Woods [S57.2]
41. Marie Harris [S58.3]
42. Nadine Ebbett [S59.1]
43. Ben Jones [S60.1]
44. Scott Fitzgerald [S61.1]
45. Martin E McGlue [S62.2]
46. Elizabeth Maria Christensen [S64.3]
47. Heather Blissett [S69.2]
48. Katelin Hardgrave [S70.2]
49. Mary Beth Taylor [S71.2]
50. Shayne Fairbrother [S73.2]
51. Polly Forrest [S75.2]
52. Kate Hunter [S76.2]
53. Tony Chad [S77.2]
54. Caleb Scott [S78.2]
55. John Campbell [S80.1]
56. Ros Connelly [S81.1]
57. Pam Hurly [S83.2]
58. Wayne Dolden [S84.1]
59. D Garland [S85.1]
60. Simon Edmonds [S86.2]
61. David Grant-Taylor [S87.2]
62. Silver Stream Railway Incorporated [S88.2]
63. Lisa Marshall [S89.2]
64. Rhys Lloyd [S90.2]
65. Save our Hills (Upper Hutt) Incorporated (SOH) [S91.3]
66. Rachel Stuart [S92.2] and
67. Jennifer Ann Dolton [S94.2]

207. The following submissions are **accepted in part** for the reasons provided above:

1. Stuart Grant [S3.1]
2. Greater Wellington Regional Council [S19.2]
3. Jane Derbyshire [S22.1]
4. Donald Keith Skerman [S48.2]
5. Phil Hancock [S52.2] and
6. Trevor Richardson [S63.1]

208. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

209. Overall, I recommend accepting the proposal to enable infrastructure, including a transport corridor with the Silverstream Spur. Taking into consideration that any proposal received for development would be required to go through the resource consent process to assess effects on the Silverstream Spur Natural Area.

#### 8.4 Recommended amendment

210. No recommended amendments to Variation 1.

## i. Topic 6: Section 32 report

### 9.1 Matters raised by submissions

211. One submission [S42.4] seeks the specific decision to acknowledge the Section 32 report is incomplete because:
- It does not include analysis on road corridor options (despite the stated “critical” importance of a road corridor).
  - It does not include analysis on the changed emphasis in the updated NPS-UD that means Upper Hutt can meet urban growth in the foreseeable future through intensification rather than greenfield development (and hence no road corridor is needed) such as the SGA.
  - It does not identify the strategic importance of the Spur as part of a significant wildlife/bird corridor.
  - The Ecological Values Assessment is a point-in-time assessment that is inappropriate for the discussion about the Spur’s future. The assessment should cover its potential for the next 50 years.
  - The Ecological Values Assessment needs to be updated, as nature has expanded the areas of significant native bush (as previously stated).

Summary reasons provided for their decision sought include:

- The importance of the SGA is not at all clear since the changes to the NPS-UD which now has an emphasis on urban intensification rather than urban sprawl.
  - They agree with Section 12.4.5 of the Section 32 report which notes the fundamental incompatibility of the infrastructure, including a transport corridor, with the Spur zoned as Natural Open Space.
  - The Section 32 report delineates a Significant Natural Area, but the report (and Variation) omits the significant amenity value of the Spur.
  - The Section 32 report does not look at the strategic importance of the Spur as part of a significant bird/wildlife corridor.
  - The Section 32 report states that *‘Silverstream Spur is critical to enable infrastructure including a transport corridor to access the SGA’* yet gives no analysis of road corridor options (other than one sentence in section 10.4.4).
212. Other submissions referred to the s32 report in their reasons provided for decisions sought on other topics. These are outlined in the paragraphs below.
213. Submission [S41.3] seeks ‘to decline (not approve) the provision to enable site-specific provisions for infrastructure, including a transport corridor and a reason provided was ‘the S32 report offers two options and critically it does not include the third option to ‘Rezone the Silverstream Spur from a mix of Rural Hill Zone and Residential Conservation Zone to Natural Open Space’ without ‘Enable site specific provisions for infrastructure, including a transport corridor’ - option 3 should be included in the S32 report.’
214. Submission [S42.2] in relation to their decision sought on Significant Natural Areas stated that ‘the map in Appendix 1 of the Section 32 report on the Variation delineates a Significant Natural Area on, and adjacent to, the Spur. This delineated area is incomplete. Map 2 shows further areas that should be part of the SNA.’

215. Submissions [S71.2] and [S77.2] in their decisions sought in opposition for infrastructure including a transport corridor stated that ‘contrary to what is stated in Section 32 Variation 1, Silverstream Spur is not critical to enable infrastructure including a transport corridor to access the SGA as there are several alternative access points’. Submission [S74.2] also refers to the s32 not analysing alternative transport corridors to access the SGA.
216. Submission [S79.2] in seeking an amendment in the provisions for infrastructure including a transport corridor stated that the s32 report notes that ‘*There may be some small effect to the environment based on activities occurring and potential development.*’ The submission considers that these effects will not be small at all. This submission also stated that ‘the map of the current and proposed zoning of the Silverstream Spur, included in the Section 32 Report, showing the identified SNAs, is inconsistent with the identified SNAs on the Spur shown on the web map on the Upper Hutt City Council website.’
217. Submission [S88.2], although not seeking a decision in relation to the s32 report included a detailed analysis of the s32 report in their submission.

## 9.2 Analysis

218. Regarding submissions [S42.2], [S41.3], [S71.2], [S74.2], [S77.2] and [S79.2]. The submissions raised concerns that the Section 32 Report omitted to analyse significant detail. Many of these relate to matters outside the scope of this variation which is focused solely on the zoning and provisions for the Silverstream Spur not the Southern Growth Area or other land. In relation to the extent of indigenous vegetation and habitats on the site this has been covered in topic 4 and infrastructure and development in topic 5. Therefore, I consider that the level of detail was appropriate to the scale and significance of the issue. The points raised in these submissions have been analysed in other topics.

## 9.3 Recommended decision

219. The following submission is **rejected** for the reasons provided above:

1. Pat van Berkel [S42.4]

220. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

## 9.4 Recommended amendment

221. No recommended amendments to Variation 1.

# 10 Topic 7: Landscapes

## 10.1 Matters raised by submissions

222. The following submissions seek the decision for a Special Amenity Landscape to be introduced over the Silverstream Spur.

223. Submission [S88.5] seeks the decision to ‘introduce a Special Amenity Landscape overlay on the entire site as the Spur meets the definition by being distinctive, widely recognised and highly valued where part of the site is dominated by natural components and part is an exceptional landscape area that has been modified by human activity.’
224. The introduction of a Special Amenity Landscape overlay on the entire Silverstream Spur was also requested by submission [S90.4] and was also sought by submissions [S42.2], [S71.1], [S71.3] and [S77.1].

## 10.2 Analysis

225. Submissions [S42.2], [S71.1] [S77.3] and [S77.1] seek to identify the Silverstream Spur as a Special Amenity Landscape as part of another topic so although analysed below the recommended decision will be under the relevant topic in relation to their submission point.
226. GWRC Regional Policy Statement Policy 27 states that ‘district and regional plans may identify Special Amenity Landscapes which are distinctive, widely recognised and highly valued by the community for their contribution to the amenity and quality of the environment of the district, city or region.’
227. Policy 28 adds that ‘where Special Amenity Landscapes have been identified in accordance with policy 27, district and regional plans shall include policies and/or methods (which may include rules) for managing these landscapes in order to maintain or enhance their landscape values.’
228. The outcome of the consultation with the Landscape Community Reference Group was the recommendation for the Landscapes chapter in the District Plan to not include Special Amenity Landscapes in the District Plan Landscapes review plan change. This recommendation was endorsed by Council at a meeting held on February 22, 2023.

## 10.3 Recommended decision

229. The removal of the identification of Special Amenity Landscapes from the Landscapes review (PC48A) of the District Plan means that it is not appropriate to consider the Silverstream Spur as a Special Amenity Landscape as there will not be special amenity landscapes included in the Upper Hutt District Plan.
230. The following submissions are **rejected** for the reasons provided above:
1. Pat Van Berkel [S42.2]
  2. Tony Chad [S77.1]
  3. Silver Stream Railway Incorporated [S88.5]
  4. Rhys Lloyd [S90.4]
231. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

## 10.4 Recommended amendment

232. No recommended amendments to Variation 1.

# 11 Topic 8: Customary Activities

## 11.1 Matter raised by the submission

233. Variation 1 states that ‘the proposed site-specific provisions would provide access to the Silverstream Spur for a range of recreation, conservation and customary purposes, as well as potential future access to the Southern Growth Area.’

234. Ngāti Toa [S93.4] seek the decision that ‘the plan variation mentions enabling access for customary activities however, there are not any meaningful provisions for customary activities.’ They stated that ‘they are more than happy to work with Council and with their Tangata Whenua partners in the rohe to come up with a solution that focuses on producing such provisions with Council kaimahi.’

## 11.2 Analysis

235. Council is engaging with Ngati Toa Rangitira and other mana whenua to review all provisions relevant to tangata whenua. This is a separate part of our rolling review programme. The provision of customary activities as a permitted activity in the open space and recreation zones is intended as an enabling placeholder in these chapters as they were notified in advance of the tangata whenua review work. The tangata whenua review will fully reflect the obligations of the District Plan in relation to Sections 6(E), 6(F) of the RMA (1991). Along with the Section 7(A) requirement to have regard to kaitiakitanga and the Section 8 of the RMA (1991) to take into account the principles of the Treaty of Waitangi. This proposed chapter aims to elevate the visibility of these taonga and is mana whenua lead.

I note that Section 2 of the RMA (1991) defines customary rights order as having the ‘the same meaning as in Section J of the Foreshore and Seabed Act 2004’, and recognises customary activity as ‘an activity, use or practice carried on, exercised or followed under a customary right order.’

## 11.3 Recommended decision

236. I consider that it is more appropriate to consider a definition for customary activities within the tangata whenua review part of the rolling review of the Upper Hutt District Plan.

237. The following submission is **accepted in part** for the reasons provided above:

1. Ngāti Toa [S93.4]

238. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

## 11.4 Recommended amendment

239. No recommended amendments to Variation 1.

# 12 Topic 9: Sites and areas of significance to Māori

## 12.1 Matter raised by submission

240. Ngāti Toa [S93.2] stated that ‘the proposal for this variation includes the protection of identified significant natural areas on Silverstream Spur from development’ and they seek ‘identifying sites and areas of significance to Māori is made a priority so that they are protected from development in the Silverstream Spur.’ They stated that ‘they are aware that current operative District Plan does not have a sites and areas significant to Māori schedule and an associated Chapter providing protection and maintenance of these sites and areas.’

## 12.2 Analysis

241. The Council recognises that there is a gap within the representation of Upper Hutt’s heritage, particularly the visibility of sites and areas of significance to Māori.

242. Upper Hutt City Council are currently completing a rolling review of our District Plan which includes introducing a Sites and Areas of Significance to Māori (SASM) and tangata whenua (TW) chapters. The proposed SASM chapter will reflect the obligations of the District Plan in relation to Sections 6(E), 6(F) of the RMA (1991). Along with the Section 7(A) requirement to have regard to kaitiakitanga and the Section 8 of the RMA (1991) to take into account the principles of the Treaty of Waitangi. This proposed chapter aims to elevate the visibility of these taonga and is mana whenua lead.

243. This review will reinvent how Upper Hutt’s operative District Plan (2004) has previously managed the District’s Māori heritage and tangata whenua values, where currently there are few objectives, policies, rules, and standards to protect these taonga. The initial research for this work has identified an area of interest in the vicinity of the Silverstream Spur which was a Pa site overlooking Te Awa Kairangi (Hutt River).

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

### 12.3 Recommended decision

245. I consider that it is appropriate to add an accidental discovery protocol to the provisions for the Silverstream Spur. It would be desirable to have this protocol apply to all earthworks however the scope of the Variation is limited to the Silverstream Spur.
246. The submission from Ngāti Toa [S93.2] is **accepted in part** for the reasons provided above:
247. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

### 12.4 Recommended amendment

248. An accidental discovery protocol is recommended to be added as Appendix 1 to the Earthworks chapter as set out below:

#### Accidental Discovery Protocol for earthworks on the Silverstream Spur

1. In the event of an “accidental discovery” of archaeological matter including human remains the following steps shall be taken:
  - a) All work within the vicinity of the site will cease immediately.
  - b) The site manager will shut down all activity, leave the site area and unearthed archaeological material in-situ and advise the relevant person (eg project manager, consultant, landowner).
  - c) The relevant person will take immediate steps to secure the area of the site to ensure the archaeological matter remains undisturbed. Work may continue outside of the site area.
  - d) The relevant person will ensure that the matter is reported to the Regional Archaeologist at Heritage New Zealand Pouhere Taonga and to any required statutory agencies or Mana Whenua authorities, if this has not already occurred.
  - e) The relevant person will ensure that a qualified archaeologist is appointed to ensure all archaeological matter is dealt with appropriately, and on the advice of the Heritage New Zealand Pouhere Taonga Regional Archaeologist.
  - f) In the event of the material being of Māori origin the relevant person will ensure that Mana Whenua authorities are contacted in order that appropriate cultural processes are implemented to remedy or mitigate any damage to the site.
  - g) Any and all visits to the project site must be cleared by the relevant person. It is advisable that a list of authorised personnel to visit the site is maintained.
  - h) The relevant person will ensure that the necessary people shall be available to meet and guide representatives of Heritage New Zealand Pouhere Taonga and mana Whenua representatives, and any other party with statutory responsibilities, to the site.
  - i) Works in the site area shall not recommence until authorised by the relevant person who will consult with Heritage New Zealand Pouhere Taonga staff, mana Whenua authorities the NZ Police (and any other authority with statutory responsibility) to ensure that all statutory and cultural requirements have been met.

All parties will work towards operations recommencing in the shortest possible timeframes while ensuring that any archaeological sites discovered are protected until a decision regarding their appropriate management is made, and as much information

as possible is gained. Appropriate management could include recording or removal of archaeological material.

## **12.5 Section 32AA Analysis**

### **Effectiveness and efficiency**

249. 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.
250. Appropriate provisions for cultural values and archaeology provides efficiency for the public and landowners in understanding the requirements for earthworks that can be undertaken in relation to the site.

### **Other reasonably practicable options**

251. The Natural Open Space zoning and infrastructure corridor could be applied without an accidental discovery protocol. However, this could mean that any cultural or archaeological values may not have the appropriate level of protection and could potentially have activities occurring that are not appropriate.

### **Cost and benefits**

252. The proposed addition of an accidental discovery protocol will not result in additional costs, based on the overall scale of the changes being minor and only occurring if an archaeological or cultural artifact is excavated during earthworks.
253. 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**

254. There is no significant risk in not acting as land uses are not proposed to change as a result of the accidental discovery protocol.

### **Decision about most appropriate option**

255. The proposed amendments are considered to be more appropriate in ensuring the potential cultural or archaeological values are protected in the event of earthworks occurring on the site.



## 13 Topic 10: Specific Amendments

### 13.1 Matters raised by submissions

256. This section covers submission points related to specific proposed Variation 1 provisions with suggested amendments. Submission points related to the same provision have been grouped together for analysis.
257. Submissions **[S74.2]**, **[S79.2]**, and **[S82.3]** seek decisions related to NOSZ-P6 - Silverstream Spur Infrastructure.
- **[S74.2]** Seek that either policy NOSZ-P6 is deleted, or, provided that the effects management hierarchy in policy 7 is amended in line with our submission, retain policy 6, with amendments.
  - **[S79.2]** Amend policy NOSZ-P6 to remove the focus on infrastructure, remove enabling of infrastructure including a transport corridor, and to solely provide for passive activities.
  - **[S82.3]** Amend proposed Policy NOSZ-P6
258. Submissions **[S19.3]**, **[S74.3]**, **[S79.3]** and **[82.4]** seek decisions related to NOSZ-P7 - Silverstream Natural Area.
- **[S19.3]** to amend reference to the effects management hierarchy to ensure consistency with the 'avoid, minimise, remedy' direction in Policy 32 of the Proposed Natural Resources Plan.
  - **[S74.3]** Amend policy NOSZ-P7 to clarify that this is an additional consideration not an alternative to other NOSZ policy.
  - **[S79.3]** Amend policy NOSZ-P7 to address the management of effects that may result from the provisions of the amended NOSZ-P6.
  - **[S82.4]** To delete proposed Policy NOSZ-P7
259. Submissions **[S74.5]**, **[S79.5]** and **[S82.5]** seek decisions related to NOSZ-R15 - Road and associated network utility infrastructure including storage tanks or reservoirs on the Silverstream Spur Natural Area.
- **[S74.5]** and **[S79.5]** seek the deletion of Controlled Activity Rule R15.
  - Submission 74 further submits that at the very least that the road should be a discretionary activity.
  - **[S82.5]** Amend proposed Rule NOSZ-R15, and make consequential amendments to the Network Utility, Earthworks, Transport & Parking, Ecosystems & Indigenous Biodiversity, and General Residential Chapters to address the matters summarised in the reasons for the submission.
260. Submissions **[S74.6]**, **[S79.6]**, **[S82.6]**, and **[S93.3]** seek decisions related to NOSZ-R22 – Removal of indigenous vegetation on the Silverstream Spur Natural Area.
- **[S74.6]** Retain NOSZ-R22.
  - **[S79.6]** Retain NOSZ-R22 but amend 'Silverstream Spur Natural Area' to 'Silverstream Spur Natural Open Space'.
  - **[S82.6]** Delete proposed Rule NOSZ-R22

- **[S93.3]** Request the addition of NOSZ-R22 which makes the removal of indigenous vegetation a discretionary activity.

261. Submissions **[S74.7]**, **[S79.7]** and **[S82.7]** seek decisions related to NOSZ-P4 – Standards for Permitted Activities.

- **[S74.7]** and **[S79.7]** As a consequence of deleting NOSZ-R15, delete NOSZ- S4.
- **[S82.7]** Delete proposed standard NOSZ-S4

262. Submissions **[S74.4]** and **[S79.4]** seek a decision related to Variation 1 providing a definition for biodiversity offsetting.

- **[S74.4]** The Variation needs to include a definition of biodiversity offsetting, which includes a requirement that an offset proposed meets the principles of offsetting. These should be included in an appendix to the Plan and should be mandatory (rather than guidance).
- **[S79.4]** Include a definition for ‘biodiversity offsetting’ in the operative Upper Hutt District Plan.

## 13.2 Analysis

### NOSZ-P6

263. The alternative relief sought by **[S74.2]** is accepted in part and the provisions are recommended to amended to remove specific references to the Southern Growth Area and refer instead to “future development opportunities”. Similarly, **[S79.2]** is accepted in part to support enhancement of biodiversity values with recommended amendments to the policy. In relation to **[S82.3]** it is not considered appropriate to remove ‘appropriate scale, design, and location’ in relation to enabling a transport corridor. Nor is it considered appropriate to ‘service residential development on the Spur.’ It is considered appropriate to ‘facilitate the revegetation of the retired plantation forestry with the appropriate native species and the provisions will be amended to reflect this as shown in Appendix A.

### NOSZ-P7

264. In relation to submissions **[S19.3]**, **[S74.3]**, **[S79.3]** and **[S82.4]**. I do not recommend deleting NOSZ-P7. I consider that there is a management hierarchy in this policy that is appropriate to maintain the biodiversity values within the identified Silverstream Spur Natural Area. I consider the policy can be further amended to include protection as well as management. The recommended amendments to NOSZ-P6 may also address some of the relief sought in **[S79.3]**. Submission **[S19.3]** is unclear as Policy 32 of the Natural Resources Plan does not relate to an effects management hierarchy, the submission point may have meant to relate to Policy 31 which contains an effects hierarchy, but I consider this to be less protective than the policy proposed.

### NOSZ-R15

~~265. This controlled activity rule to enable an infrastructure and transport corridor, subject to standards is recommended to be retained with amendments to delete f) and remove ‘significant from h). **[S82.5]** is therefore accepted in part.~~

262. The expert evidence from Mr Goldwater identifies that “a new road would permanently bisect a core part of the Spur, which in turn could compromise the linkage function of the ponga-mamaku treefernland that presently sits between the two higher value areas of beech-kamahi forest”.
263. Mr Goldwater also notes that the “Section 32 Report and proposed policy NOSZ-S4 states that approximately 10% of the Spur would be required to construct the road” and that “this amount of vegetation removal would have a moderate to high magnitude of affect, depending on what proportion of the 3.5 hectares comprises indigenous-dominated vegetation”.
264. Mr Goldwater further notes that “it is difficult to accurately assess the level of residual effect of such a road on the Spur without further information, plans, and ecological investigations. Factors such as road width, lighting design, speed limit, and projected daily vehicle trips would also need to be taken into consideration”.
265. As noted above, Variation 1 to Plan Change 49 – Silverstream Spur does not in itself propose a transport corridor but provides the potential for one. However, to address the concerns raised by submitters, and the effects raised by Mr Goldwater I recommend that rule NOSZ-R15 is amended to become a Discretionary Activity. This will still provide a consenting pathway for the road and associated infrastructure.

#### NOSZ-R22

266. ~~No a~~Amendments are recommended to the rule as a result of submissions [S74.6], [S79.6] [S82.6] and [S93.3], updated evidence provided by Mr Goldwater and legal advice. I consider that restricted discretionary activity status is appropriate and this will enable all effects to be appropriately assessed and addressed, and provide a stronger method to give effect to the NPS-IB in respect of the Silverstream Spur in advance of a wider SNA plan change. any infrastructure that cannot meet the standards in the controlled, this This will provide partial relief to submission [S74.6] and [S82.6]. A restricted Discretionary activity allows for a proposal to be declined if effects are not adequately addressed. In addition, an amendment is recommended to be made to clarify the name of the “natural area” identified on the maps, Silverstream Spur Significant Natural Area is considered to be an appropriate name for the identified area. I acknowledge that this natural area is being identified in advance of other similar areas across the district and the extent may change as a result of the implementation of the National Policy Statement for Indigenous Biodiversity (NPSIB). The implementation of the NPSIB is currently intended to be notified in 2025.

#### NOSZ-S4

267. This standard specifies the requirements for infrastructure to be a controlled activity on this site and is integral to enabling infrastructure on the site while protecting the natural, recreational and visual values of the Silverstream Spur. ~~No a~~Amendments are recommended to delete NOSZ-S4 as a consequence of rule NOSZ-R22 being a discretionary activity and will address as a result of submissions [S74.7], [S79.7] and [S82.7].

## NEW DEFINITION

268. In relation to submissions [S74.4] and [S79.4]. The RMA does not provide a definition for biodiversity offsetting, but the National Policy Statement for Indigenous Biodiversity (NPS-IB) gazetted in July 2023 includes the following definition of “biodiversity offset” which states:

*Biodiversity offset means a measurable conservation outcome that meets the requirements in Appendix 3 [of the NPS-IB which are Principles for biodiversity offsetting] and results from actions that are intended to:*

- (a) *Redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and*
- (b) *Achieve a net gain in type, amount, and condition of indigenous biodiversity compared with that lost.*

269. I consider it appropriate to include a definition of biodiversity offset within Variation 1 which adopts or refers to the NPS-IB definition.

### 13.3 Recommended decision

270. The following submissions are **rejected** for the reasons provided above:

1. Greater Wellington Regional Council [S19.3]
2. Royal Forest and Bird Protection Society Inc [S74.5]
- ~~3. Royal Forest and Bird Protection Society Inc [S74.7]~~
3. 4. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.3]
4. ~~5.~~ Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.5]
- ~~6. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.7]~~
6. ~~7.~~ The Guildford Timber Company Limited [S82.4]
7. ~~8.~~ The Guildford Timber Company Limited [S82.6] and
- ~~9. The Guildford Timber Company Limited [S82.7]~~

271. The following submissions are **accepted in part** for the reasons provided above:

1. Royal Forest and Bird Protection Society Inc [S74.2]
2. Royal Forest and Bird Protection Society Inc [S74.3]
3. Royal Forest and Bird Protection Society Inc [S74.4]
4. ~~Royal Forest and Bird Protection Society Inc [S74.7]~~
5. 4. Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.2]
6. ~~5.~~ Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.4]
7. ~~6.~~ Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.6]
8. ~~7.~~ The Guildford Timber Company Limited [S82.3]
9. ~~8.~~ The Guildford Timber Company Limited [S82.5] and
10. ~~9.~~ Ngāti Toa [S93.3]

272. The following submission is **accepted** for the reasons provided above:

1. Royal Forest and Bird Protection Society Inc [S74.6]
2. ~~Upper Hutt Branch of Royal Forest and Bird Protection Society Inc [S79.7]~~
3. ~~The Guildford Timber Company Limited [S82.7]~~

273. My recommendations in relation to further submissions reflect the recommendations on the relevant primary submissions.

## 13.4 Recommended amendment

274. Recommended amendments are outlined in Appendix A. Recommended amendments to Variation 1.

## 13.5 Section 32AA Analysis

### Effectiveness and efficiency

275. The amendments to the provisions for the Silverstream Spur are an effective approach to ensure that any infrastructure or other development on the land are undertaken in a manner that is sensitive to the site and context. The effects management hierarchy in NOSZ-P7 and the restricted discretionary activity status will require a robust effects assessment for development undertaken on the site as a result of this variation.
276. Appropriate provisions for development provide efficiency for the public and landowners in understanding the requirements for development that can be undertaken in relation to the site.

### Other reasonably practicable options

277. The Natural Open Space zoning and infrastructure corridor could be applied without these amendments. However, this could mean that any indigenous biodiversity on the site may not have the appropriate level of protection and could potentially have activities occurring that are not appropriate.

### Cost and benefits

278. The proposed amendments to the policies and rules will not result in additional costs, based on the overall scale of the changes being relatively minor in the scale of the development of infrastructure on the site.
279. The benefit will be the addition of safeguard for the indigenous vegetation on the site by the introduced provisions and amendments.

### Risks of acting or not acting

280. There is no significant risk in not acting as land uses are not proposed to change as a result of these amendments.

### Decision about most appropriate option

281. The proposed amendments are considered to be more appropriate in ensuring the potential cultural or archaeological values are protected in the event of earthworks occurring on the site.

## 14 Conclusion

282. In conclusion I consider that the submissions on this Variation should be accepted, accepted in part or rejected as set out in Appendix B below for the reasons set out in Sections 3.2-13.3 above.
283. I recommend that provisions in the NOSZ chapter and Planning maps be amended as set out in Appendix 2 below for the reasons set out in Sections 4.1-13.5 above.
284. I consider that the amended provisions will be efficient and effective in achieving the purpose of the RMA (especially for changes to objectives), the relevant objectives of this plan and other relevant statutory documents, for the reasons set out in the Section 32AA evaluations undertaken and included in Sections 12.5 and 13.5 of this report.

## 15 Recommendations

I recommend that:

1. The Hearing Panel accept, accept in part, or reject submissions (and associated further submissions) as outlined in Appendix B of this report; and
2. Variation 1 is amended in accordance with the changes recommended in Appendix A of this report.

Signed:

Name and Title		Signature
Report Author	<del>Emily Thomson</del> <u>Suzanne Rushmere</u>  <u>Acting Planning Policy Manager,</u> Upper Hutt City Council	<i>S Rushmere</i>

## Appendix A. Recommended amendments to Variation 1

The provisions in blue are the notified provisions (Strikethrough for deletions and underlined for additions) and coloured **red** and **green** for further amendments recommended in this report.

New Zoning	<u>Rezone Silverstream Spur as Natural Open Space Zone</u>
New Definition	<p><u>Biodiversity Offset</u></p> <p><u>means the same as in the National Policy Statement for Indigenous Biodiversity in box below:</u></p> <p><u>biodiversity offset means a measurable conservation outcome that meets the requirements in Appendix 3 [of the NPS-IB] and results from actions that are intended to:</u></p> <p><u>(a) redress any more than minor residual adverse effects on indigenous biodiversity after all appropriate avoidance, minimisation, and remediation measures have been sequentially applied; and</u></p> <p><u>(b) achieve a net gain in type, amount, and condition of indigenous biodiversity compared to that lost.</u></p>
Add an Earthworks Appendix 1	<p><u>Accidental Discovery Protocol for earthworks on the Silverstream Spur</u></p> <p>2. <u>In the event of an “accidental discovery” of archaeological matter including human remains the following steps shall be taken:</u></p> <ul style="list-style-type: none"> <li><u>j) All work within the vicinity of the site will cease immediately.</u></li> <li><u>k) The site manager will shut down all activity, leave the site area and unearthed archaeological material in-situ and advise the relevant person (eg project manager, consultant, landowner).</u></li> <li><u>l) The relevant person will take immediate steps to secure the area of the site to ensure the archaeological matter remains undisturbed. Work may continue outside of the site area.</u></li> <li><u>m) The relevant person will ensure that the matter is reported to the Regional Archaeologist at Heritage New Zealand Pouhere Taonga and to any required statutory agencies or Mana Whenua authorities, if this has not already occurred.</u></li> <li><u>n) The relevant person will ensure that a qualified archaeologist is appointed to ensure all archaeological matter is dealt with appropriately, and on the advice of the Heritage New Zealand Pouhere Taonga Regional Archaeologist.</u></li> <li><u>o) In the event of the material being of Māori origin the relevant person will ensure that Mana Whenua authorities are contacted in order that appropriate cultural processes are implemented to remedy or mitigate any damage to the site.</u></li> <li><u>p) Any and all visits to the project site must be cleared by the relevant person. It is advisable that a list of authorised personnel to visit the site is maintained.</u></li> <li><u>q) The relevant person will ensure that the necessary people shall be available to meet and guide representatives of Heritage New Zealand</u></li> </ul>

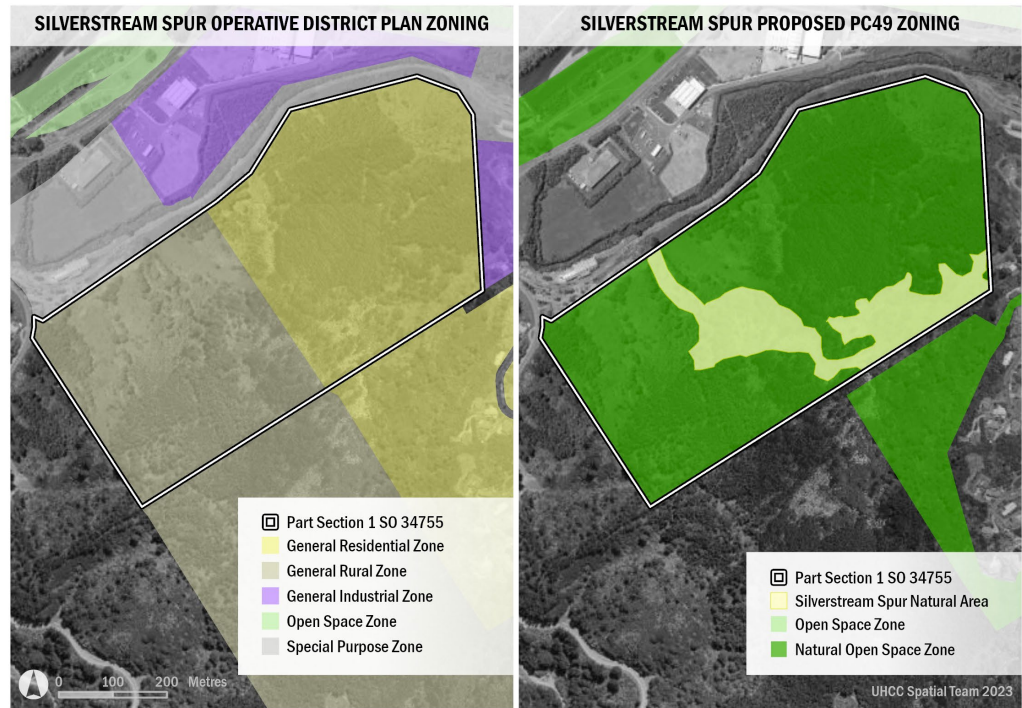
	<p><u>Pouhere Taonga and mana Whenua representatives, and any other party with statutory responsibilities, to the site.</u></p> <p>r) <u>Works in the site area shall not recommence until authorised by the relevant person who will consult with Heritage New Zealand Pouhere Taonga staff, mana Whenua authorities the NZ Police (and any other authority with statutory responsibility) to ensure that all statutory and cultural requirements have been met.</u></p> <p>s) <u>All parties will work towards operations recommencing in the shortest possible timeframes while ensuring that any archaeological sites discovered are protected until a decision regarding their appropriate management is made, and as much information as possible is gained. Appropriate management could include recording or removal of archaeological material.</u></p>
New Policies	<p><u>NOSZ-P6: Silverstream Spur Infrastructure</u></p> <p><u>Enable infrastructure including a transport corridor within the Silverstream Spur (Pt Sec 1 SO 34755, Parcel ID: 3875189) at an appropriate scale, design, and location to</u></p> <ol style="list-style-type: none"> <li>1. <u>Provide for a range of passive recreation and future development opportunities where the effects of such development are managed in accordance with NOSZ-P7 and;</u></li> <li>2. <u>Support for the development of the Southern Growth Area restore and enhance the biodiversity of the Silverstream Spur.</u></li> </ol>
	<p><u>NOSZ-P7: Silverstream Spur Significant Natural Area</u></p> <p><u>Adverse effects from development on Protect the biodiversity values within the identified Silverstream Spur Significant Natural Areas shall be by requiring adverse effects from development to be:</u></p> <ol style="list-style-type: none"> <li>(a) <u>avoided where practicable; and</u></li> <li>(b) <u>where adverse effects cannot be demonstrably avoided, they are mitigated where practicable; and</u></li> <li>(c) <u>where adverse effects cannot be demonstrably mitigated, they are remedied where practicable; and</u></li> <li>(d) <u>where more than minor residual adverse effects cannot be demonstrably avoided, minimised, or remedied, biodiversity offsetting is provided where possible; and</u></li> <li>(e) <u>if biodiversity offsetting is not appropriate, the development itself is avoided.</u></li> </ol>
New Rule	<p><u>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)</u></p> <ol style="list-style-type: none"> <li>1. <u>Activity Status: CON DIS</u></li> </ol> <p><u>Where:</u></p> <ol style="list-style-type: none"> <li>a) <u>Compliance is achieved with:</u> <ol style="list-style-type: none"> <li>i. <u>NOSZ-S4.</u></li> </ol> </li> </ol>



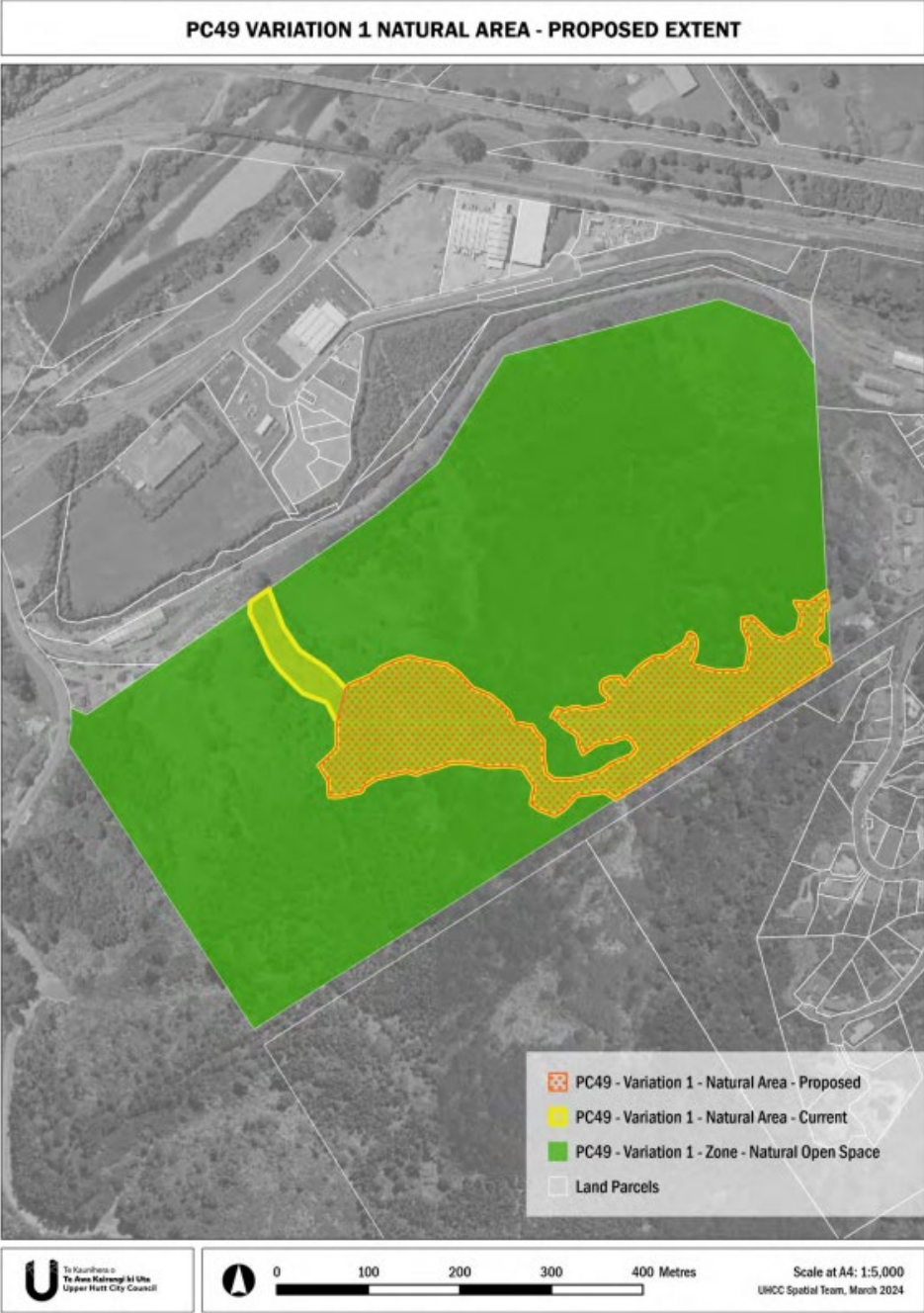
	<p><u>Council may impose conditions over the following matters:</u></p> <ul style="list-style-type: none"> <li>b) <u>Landscaping.</u></li> <li>e) <u>Road alignment location and design.</u></li> <li>d) <u>Provision of and <del>effects on network utilities</del> and/or services.</u></li> <li>e) <u>Earthworks and accidental discovery.</u></li> <li>f) <u>Protection of any special amenity feature.</u></li> <li>g) <u>f) Financial contributions.</u></li> <li>h) <u>g) <del>Effects on biodiversity in the identified Significant Silverstream Spur Natural Area.</del></u></li> </ul>
	<p><u>2. Activity Status: RDIS</u></p> <p><u>Where:</u></p> <ul style="list-style-type: none"> <li>a) <u>compliance not achieved with</u> <ul style="list-style-type: none"> <li>i. <u>NOSZ S4</u></li> </ul> </li> </ul>
New Standards	<p><u>NOSZ S4</u></p> <ul style="list-style-type: none"> <li>1. <u>Carriageway traffic lanes width shall not exceed 3.5m per lane.</u></li> <li>2. <u>Footpath or shared path shall be provided on one side of the road only.</u></li> <li>3. <u>Road and footpath gradient shall not exceed 1:8.</u></li> <li>4. <u>Parallel parking may be provided along one side of the road.</u></li> <li>5. <u>Transport corridor and earthworks are not located within the Silverstream Spur Natural Area.</u></li> </ul>
New Rule	<p><u>NOSZ - R22</u></p> <p><u>Removal of indigenous vegetation on the Silverstream Spur Significant Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189) 1.</u></p> <p><u>Activity Status: RDIS</u></p> <p><u>Council shall restrict its discretion to the following matters:</u></p> <ul style="list-style-type: none"> <li>1. <u>Landscaping.</u></li> <li>2. <u>Earthworks and accidental discovery.</u></li> <li>3. <u>Protection of any special amenity feature.</u></li> <li>4. <u>Effects on indigenous biodiversity in the identified Silverstream Spur Significant Natural Area.</u></li> <li>5. <u>Tangata whenua values</u></li> <li>6. <u>Effects on ecological values.</u></li> <li>7. <u>Measures to avoid, remedy or mitigate potential adverse effects</u></li> </ul>

Map

[Silverstream Spur Significant Natural Area identified on the map as an overlay as shown below](#)



Recommended revised extent of the Silverstream Spur Significant Natural Area following expert ecological evidence. Area recommended for removal is shown in yellow and area recommended for retention is shown in orange. (Map legend not updated to reflect name change).



## Appendix B. Recommended responses to submissions and further submissions

# Appendix C. Silverstream Spur preliminary archaeological assessment

## Appendix D. Expert ecological evidence

## Appendix E. Extracts from legal advice provided by Buddle Finlay relevant to the NPS-IB

### Clause 3.8(6) of the National Policy Statement on Indigenous Biodiversity (NPS-IB)

#### Question from officers

The hearings panel asked officers to provide an assessment of PC49 and the Variation against the NPS-IB. The legal advice we are seeking specifically relates to whether clause 3.8 (6) of the NPS-IB has been triggered by PC49 and the Variation.

The NPS-IB came into force on 4 August 2023, and Clause 3.8 (6) of the NPS-IB states that:

*“If a territorial authority becomes aware (as a result of a resource consent or any other means) that an area may be an area of significant indigenous vegetation or significant habitat of indigenous fauna that qualifies as an SNA, the territorial authority must:*

*Conduct an assessment of the area in accordance with subclause (2) as soon as practicable; and if a new SNA is identified as a result, include it in the next appropriate plan or plan change notified by the territorial authority.”*

Whilst Council identified potential SNAs in 2021, this work was at its very early stages. Our view is that clause 3.8(6) of the NPS-IB has not been triggered for PC49, this is because:

- PC49 was notified on 11 August 2021, prior to the NPS-IB coming into force on 4 August 2023;
- no SNAs were identified in that plan change;
- the draft SNA's identified by Council do not form part of a current plan or plan change and have not been assessed against subclause (2) of the NPS-IB in accordance with Clause 3.8 (6)(a); and
- given the three points above, PC49 would not be the 'next appropriate plan change' to give effect to the clause 3.8 (6) of the NPS-IB.

In your legal opinion, is our view on PC49 not triggering Clause 3.8 (6) correct?

#### Response from Buddle Finlay

We agree with your view that clause 3.8(6) of the NPS-IB is not triggered by PC49 and we set our reasoning below. UHCC is required by section 75 of the RMA to 'give effect' to, among other things, national policy statements in its District Plan. This obligation applies even where a new NPS takes effect after a plan or plan change is notified, as is the case in respect of the NPS-IB and PC49. However, the manner in which UHCC is required to 'give effect' to an NPS depends on the wording of the NPS and any implementation and transitional provisions in an NPS are important in this regard.

In the case of the NPS-IB, there are specific timing requirements on territorial authorities in Part 4 of the NPS-IB in respect of when they must implement aspects of the NPS-IB. In general, this must be done "as soon as reasonably practicable" , but specifically within five years after commencement for planning provisions for SNAs and for information requirements for resource consent applications,<sup>3</sup> and within eight years for other provisions.<sup>4</sup> Clause 3.8(6) requires that, if a territorial authority becomes aware that an area "may be an area of significant indigenous vegetation or significant habitat of indigenous fauna that qualifies as an SNA", the territorial authority must conduct an assessment of the area "as soon as practicable" and, if a new SNA is

identified as a result, include it in "the next appropriate plan or plan change notified by the territorial authority."

We understand that UHCC has become aware of areas that may be areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as SNAs. UHCC is obliged to undertake an assessment of those areas in accordance with Clause 3.8(6) 'as soon as reasonably practicable'. However, the obligation to include a newly identified SNA in a plan comes after that assessment has taken place and an SNA has been identified. We understand that is not yet the case in respect of the potential SNAs identified by UHCC. Accordingly, UHCC is not yet obliged by the NPS-IB to include the potential SNAs in a plan change.

In any event, the obligation relates to the "next appropriate plan or plan change notified... (emphasis added)". In our view, the clear intention of this wording is that the obligation does not apply to a proposed plan or plan change notified prior to the NPS-IB coming into force. As you note, PC49 was notified prior to the NPS-IB coming into force, and therefore could not be the 'next plan change notified'.

For these reasons, in our view it is not necessary to consider the 'appropriateness' of PC49 in terms of clause 3.8(6). However, if this was a relevant consideration, the fact that the draft SNAs identified by UHCC did not form part of the plan change as notified would make it inappropriate for these to be introduced at a later stage. To do so would be 'out of scope' of the plan change in that there would be a real risk that persons potentially affected by the proposed SNAs would have been denied an effective opportunity to participate in the decision-making process. As such, a variation would be required to introduce proposed SNAs into PC49. Plainly, this is not something that is required by the NPS-IB.

Your second query in relation to clause 3.8(6) of the NPS-IB relates to the Variation:

#### Question from officers

We also consider that clause 3.8 (6) has not been triggered by the Variation. The Variation proposes to rezone the Silverstream Spur as Natural Open Space, and an area of significant indigenous vegetation has been identified within the Natural Open Space Zone in the Variation.

The definition of an SNA in the NPS-IB is more relevant than clause 3.8 (6) in this case. The NPS-IB defines a SNA as follows:

"SNA, or significant natural area, means:

*any area that, after the commencement date, is notified or included in a district plan as an SNA following an assessment of the area in accordance with Appendix 1;*

*and*

*any area that, on the commencement date, is already identified in a policy statement or plan as an area of significant indigenous vegetation or significant habitat of indigenous fauna (regardless of how it is described); in which case it remains as an SNA unless or until a suitably qualified ecologist engaged by the relevant local authority determines that it is not an area of significant indigenous vegetation or significant habitat of indigenous fauna.*

In respect of paragraph (b) above, the definition of policy statements and plans in the NPS-IB "includes regional policy statements and proposed regional policy statements, and regional plans, district plans, and proposed plans."



The Variation was notified on the 5 October 2022, and we consider that the natural area for the Silverstream Spur is an identified SNA for the purposes of paragraph (b) of the definition of an SNA in the NPS-IB.

It is acknowledged that clause 3.8 (1) of the NPS-IB states that:

*“Every territorial authority must undertake a district-wide assessment of the land in its district to identify areas of significant indigenous vegetation or significant habitat of indigenous fauna that qualify as SNAs.”*

However, whilst this has not taken place, Clause 3.8 (5) of the NPS-IB also states that:

“A territorial authority need not comply with subclause (1) in respect of any SNA referred to in paragraph (b) of the definition of SNA, (ie, an area already identified as an SNA at the commencement date) if, within four years after the commencement date, a suitably qualified ecologist engaged by the territorial authority confirms that the methodology originally used to identify the area as an SNA, and its application, is consistent with the assessment approach in Appendix 1.”

By including the natural area in the Variation it is our view that an opportunity to provide submissions on this has been provided. Submissions on the SNA were received. The hearings panel have directed expert ecological conferencing on the Silverstream Spur SNA. The outcome of this expert conferencing could help determine the extent of the natural area and provide an assessment of the Silverstream Spur natural area against the NPS-IB to give effect to clause 3.8 (5).

It is noted therefore that whilst Clause 3.8 (6) is not triggered Clause 3.10 is.

In your legal opinion, is our view that the Variation has not triggered Clause 3.8 (6) correct?

#### **Response from Buddle Finlay**

For similar reasons as above, we do not consider clause 3.8(6) is engaged by the Variation. That is, the Variation was notified prior to NPS-IB coming into force and is therefore not the 'next appropriate plan change notified'.

We also agree with your interpretation above that the proposed area of significant indigenous vegetation is an SNA for the purposes of the NPS-IB. That is, it comes under paragraph (b) of the definition of 'SNA' because it is an area of significant indigenous vegetation which, on the commencement date of the NPS-IB was already identified in a plan. As you note, the definition of 'policy statements and plans' includes 'proposed plans', which would include PC49 as varied.

As an SNA which was already identified in a plan, clause 3.8(5) is relevant to the proposed area of significant indigenous vegetation. That is, within four years after the commencement date of the NPS-IB, "a suitably qualified ecologist engaged by the territorial authority [must confirm] that the methodology originally used to identify the area as an SNA, and its application, is consistent with the assessment approach in Appendix 1 [of the NPS-IB]".

Accordingly, UHCC should be satisfied that either this requirement is met, or will be met, by 4 August 2027. Otherwise, the proposed area of significant indigenous vegetation would need to be included in the district-wide assessment required by clause 3.8(1)