

BEFORE THE FRESHWATER HEARING PANEL OF THE GREATER WELLINGTON
REGIONAL COUNCIL

IN THE MATTER OF the Resource Management Act 1991

AND

IN THE MATTER OF Proposed Plan Change 1 to the Regional Policy Statement for the
Wellington Region (Hearing Stream 6)

SUPPLEMENTARY STATEMENT OF EVIDENCE BY CLAIRE HUNTER

20 MARCH 2024

1. This supplementary evidence is in response to Minute 22 issued by the Hearings Panel on 6 March 2024. This Minute invited Wellington International Airport Limited (**WIAL**) to provide:
 - a. *any further information on the application of draft Policy 24C and Table 17 to its proposed activities, in particular its future work on the airport seawall and the extent to which that work could be restricted by Policy 24C.*
 - b. *any information on whether ‘mixed kelp assemblages’ and/or “bull kelp forests” or similar ecosystems or species could impact the upgrade and maintenance of the seawall.*
2. The Minute notes *that while a detailed assessment of all provisions, including those in the Natural Resources Plan (NRP), is beyond scope, the Panel is trying to get a better, real-world understanding of the potential impact of the PC1 provisions on WIAL’s maintenance and upgrade activities.*
3. The seawall area is situated in Lyall Bay, which faces the Southern Ocean. As such, particularly during winters, it is often exposed to large waves from southerly storms, which can pose a threat to Moa Point Road and other 3 Water infrastructure as well as the Wellington Airport runway and, as a consequence, flight operations.
4. Wave protection seawalls and a breakwater were constructed in the 1950s to protect these assets. Over time, these coastal defences have undergone various extensions, modifications, and maintenance works, with the most notable being the Southern Seawall in 1972.
5. However, these defences are now approaching the end of their design life, and due to changes in climate patterns, they're undersized by today's standards. As a result, they require renewal to ensure the ongoing protection of the road asset, other 3 Water community infrastructure, and the Airport. WIAL has provided an overview of the climatical, and engineering challenges faced and the seawall project. This presentation is attached as **Attachment 1** to my evidence.
6. Investigations into the renewal/upgrading of the seawall are underway. WIAL has engaged technical experts to advise on the likely extent and severity of the effects arising from the upgrade of this asset. The consent investigation for this project includes evaluating the ecological characteristics and values that may exist on the seawall infrastructure itself, as well as the surrounding areas of the coastal marine area that could be impacted by the seawall's extension or upgrade.
7. These investigations are still in their preliminary stages, and fieldwork for this specific project has yet to be finalised and fully reported on. However, in around 2014 - 2016, extensive marine ecological studies were completed within Lyall Bay, including the seawall area, as part of a previous project.

8. These technical reports are **attached** to this response as Attachment 2 and Attachment 3. Referring to these reports completed by NIWA and Aquatic Environmental Services, the following observations and conclusions, which have relevance to the Lyall Bay existing environment and therefore of relevance to these proceedings, were made:

- *Rocky reef habitats are found all along the exposed southern Wellington coast supporting a rich and diverse community of brown, red and green macroalgae which in turn support a rich reef community of a range of fauna including gastropods (snails), paua, kina and rock lobsters.*
- *The communities found on the reefs off the southern end of the runway are typical of those found along the Wellington coastline. Large strap-like canopy-forming macro-algal species (e.g. *Lessonia variegata* or brown kelp and *Macrocystis pyrifera* commonly known as giant or bladder kelp) were common in the sub-tidal parts of all transects, except the one directly off the end of the runway.*
- *Over 40 other species were found on the reefs at low densities. Barnacles were the most common taxa intertidally along with periwinkles and limpets while sea-urchins occurred subtidally.*
- *Paua and rock lobster were uncommon but paua were associated with both natural bedrock and artificial blocks. A range of invertebrate taxa were found on concrete structures in the intertidal zone including periwinkles, snails, limpets, chitons and barnacles. Barnacles and snails were more common on rougher surfaces and chitons on smooth surfaces.*
- *During the first survey of reefs a “Bangiales” type filamentous algae and an undescribed red foliose macroalgae were found respectively on intertidal concrete structures and subtidal rocks at the southern end of the runway. Subsequent additional surveys found no additional specimens of the filamentous Bangiales on boulders in the vicinity but more specimens were found at the extreme western end of Lyall Bay which genetic sequencing confirmed were the same as previous specimens found in the wider Wellington region. The subtidal foliose red algae was not found during additional searches along other parts of Wellington’s south coast but has been found on the Otago coastline.*
- *The phytoplankton community (microscopic algae in the plankton) was dominated by diatoms then dinoflagellates. Cell concentrations from the single sampling were very low with highest number of taxa and cell numbers found inshore in the middle of Lyall Bay. All species found are harmless and cosmopolitan, as would be expected from a well-flushed open bay.*
- *Seabirds likely to be present within Lyall Bay comprise blue penguin (*Eudyptula minor*) which breeds along the south coast, fluttering shearwater *Puffinus gavius*, gulls, terns, shags, reef heron *Egretta sacra*, white-faced herons and variable oystercatchers *Haematopus unicolor*.*

- *Based on the Department of Conservation cetacean sighting database killer whales (Orcinus orca) and common dolphin (Delphinus delphis) have occurred in Lyall Bay and close to the southern end of the runway. Other species may occur close to the Harbour entrance but there is no evidence that Lyall Bay is particularly important for marine mammals and use is likely to be sporadic and transitory.*
9. The information provided indicates that certain habitats exist in the Lyall Bay area, which are listed in Table 17 of Appendix 1 of the Proposed Plan Change 1 to the Wellington Regional Policy Statement (RPS). These habitats comprise mixed kelp assemblages and Giant Kelp. Red algae were also discovered in the area during the ecological surveys conducted. Although this particular species was undescribed, other species of red algae, like *Gelidium johnstonii*, are listed in Table 17. Additionally, the reports have suggested that reef heron are likely to be present in Lyall Bay (although it is understood this was in reference to the other side of Lyall Bay from the seawall area), and Orca have been sighted (though also not likely to be a significant habitat for it), both of which are species listed in Table 17.
 10. Given the presence of these species in and around the seawall area, it is clear that the combination of the proposed policies, Appendix 1A and Table 17 will create difficulties for any seawall replacement project to meet the requirement to avoid all adverse effects. Where such habitats or species may be unavoidably adversely affected, there is also an inability to consider offsetting or compensation. This would pose a major policy obstacle for a project that is crucial to safeguard the Airport and other essential infrastructure in the area.
 11. There also exists a certain degree of uncertainty in my view regarding the applicability of Table 17 species and habitats. Specifically, it is not sufficiently clear how many kelp species would need to be present within the seabed to qualify as an “assemblage” or “a forest”. Additionally, the siting of Orca or reef heron in Lyall Bay raises questions about whether this area is of significance to such species and what response is required in the context of the PC1 provisions. In light of these concerns and potential uncertainties, I hold the view that the aforementioned list should be removed from the RPS. It should also be noted that a comparable list of scheduled sites of significance is already encompassed within the Greater Wellington Regional Natural Resources Plan (NRP), which is discussed in detail below.
 12. The Section 42A report writer's rebuttal evidence and further amended Policy 24C essentially duplicates Policy 11 of the New Zealand Coastal Policy Statement (NZCPS). However, two issues require further consideration as a result of this drafting in my view.
 13. Firstly, it is necessary to determine the meaning of Policy 11 in a regional context and whether it is appropriate to simply replicate the NZCPS provisions in the RPS. In my opinion, it would be better to adopt a more nuanced approach and consider how Policy 11 should be applied in

the Wellington regional context, considering different responses for different locations and activities, such as nationally or regionally significant infrastructure.

14. As I explained in my primary evidence, the New Zealand Coastal Policy Statement (NZCPS) was drafted before section 104(1)(ab) of the Resource Management Act 1991 was enacted, and the more recent national policy, which recognises that the location, functional or operational requirements of national and regionally significant infrastructure are often constrained and can conflict with areas of significance. These other national documents provide a pathway to address these conflicts by enabling the application of the effects management hierarchy, which includes offsetting and compensation. In my opinion, applying Policy 11 in an inflexible manner in the RPS could lead to considerable costs to the region that have not been adequately evaluated in Section 32 terms.
15. In contrast to PC1, the NRP follows a different approach and aligns more closely with my own interpretation of how Policy 11 should be applied in a regional context. Notably, the NRP provides a different pathway through the NZCPS Policy 11 matters for Regionally Significant Infrastructure and existing infrastructure activities. This can be seen in Policies P38 and P39, which are copied below.
16. The NRP has also identified sites or habitats which meet Policy 11(a) of the NZCPS. There are differences between those habitats listed in the PC1 and the NRP. For instance, even though “kelp beds” are considered to have “significant indigenous biodiversity values” in the NRP, it provides that they do not fully meet the applicable Policy 11(a) criteria. Instead, this type of habitat is classified under Policy 11(b) of the NZCPS, and the NRP uses a more nuanced approach to manage adverse effects where such habitats may be affected, as shown in Policy P38(c) below.

4.7.2 Managing adverse effects on indigenous biodiversity within the coastal environment

Policy P38: Indigenous biodiversity values within the coastal environment



To protect the indigenous biodiversity values, use and development within the coastal environment shall:

- (a) avoid adverse effects on indigenous biodiversity values that meet the criteria in Policy 11(a) of the New Zealand Coastal Policy Statement (NZCPS) namely:
 - (i) indigenous taxa listed as threatened or at risk in the NZ Threat classification system lists or as threatened by the International Union for Conservation of Nature and Natural Resources;
 - (ii) indigenous ecosystems and vegetation types in the coastal environment that are threatened or are naturally rare;
 - (iii) habitats of indigenous species where the species are at the limit of their natural range, or are naturally rare;
 - (iv) areas in the coastal environment containing nationally significant examples of indigenous community types;
 - (v) areas set aside for full or partial protection of indigenous biological diversity under other legislation; and
- (b) avoid significant adverse effects, on indigenous biodiversity values that meet the criteria in Policy 11(b) (i) – (vi) of the NZCPS, and
- (c) manage non-significant adverse effects of activities on indigenous biodiversity values that meet the criteria in Policy 11(b) of the NZCPS by:
 - (i) avoiding adverse effects where practicable, and
 - (ii) where adverse effects cannot be avoided, **minimising** them where practicable, and
 - (iii) where adverse effects cannot be **minimised** they are remedied where practicable, and
 - (iv) where **residual adverse effects** cannot be avoided, **minimised**, or remedied, **biodiversity offsetting** is provided where possible, and
 - (v) if **biodiversity offsetting** of **residual adverse effects** is not possible, the activity itself is avoided unless the activity is **Regionally Significant Infrastructure** then **biodiversity compensation** is provided, and
 - (vi) the activity itself is avoided if **biodiversity compensation** cannot be undertaken in a way that is appropriate as set out in Schedule G3, including Clause 2 of that schedule, and
- (d) for all other sites within the coastal environment not meeting Policy 11(a) or (b) of the NZCPS, manage significant adverse effects on indigenous biodiversity values using the effects management hierarchy set out in (b) to (g) of Policy P32.

17. Furthermore, where there remains a conflict between existing infrastructure and renewable electricity generation activities and a site of biodiversity significance within the coastal environment that meets Policy P38 (and therefore NZCPS Policy 11(a) or 11(b)) criteria, a different policy context applies in the NRP, as follows (refer to Policy P39 of the NRP):

Policy P39: Existing Regionally Significant Infrastructure and renewable energy generation activities within a site that meets any of the criteria in Policy P38(a)(i) - (v) or (b) or included in Schedule F5



Consider providing for the operation, maintenance, **upgrade** and **extension** of existing **Regionally Significant Infrastructure** and **renewable energy generation activities** within a site in the coastal environment that meets any of the criteria in Policy P38(a)(i) - (v) or (b) or included in Schedule F5 where:

- (a) there is a **functional need** or **operational requirement** for the activity to locate in that area, and
- (b) there is no practicable alternative on land or elsewhere in the coastal environment for the activity to be located, and
- (c) the activity provides for the maintenance and, where practicable, the enhancement or **restoration** of the affected significant indigenous biodiversity values and attributes at, and in proximity to, the affected area, taking into account any consultation with the Wellington Regional Council, the Department of Conservation and **mana whenua**.

18. I understand that the policy framework set out above in the NRP was developed after a lengthy mediation process involving various stakeholders, including the Council and WIAL, who also considered the likely replacement of the seawalls in the near future as an example when reviewing the impacts of the NRP provisions on such activities.
19. These provisions were only relatively recently settled via consent order (2022), and the entire Plan only became operative in July 2023. I am unsure why PC1 is suggesting a different approach now as it was not addressed in the section 32 documentation.
20. In my opinion, the approach outlined in the NRP is more suitable for managing significant biodiversity where there may be conflicts with national and regional infrastructure in the coastal marine area. It also aligns more consistently with section 104(1)(ab) and more recent national direction on such matters.
21. In my view, the RPS should include a separate provision to assess projects such as WIAL's seawall project and other infrastructure activities in the Wellington coastal marine area, which are of national or regional significance. This provision could be similar to Policy 24D proposed for renewable electricity generation activities, and the policies set out above. My suggested

drafting is set out below, noting that I have attempted to keep this policy consistent with the general framework of this chapter of PC1.

Policy 24X: Managing The Effects Of Regionally Significant Infrastructure On Significant Indigenous Ecosystems And Habitats Within The Coastal Environment – District and Regional Plans

As soon as reasonably practicable, and no later than 4 August 2028, district and regional plans shall include policies, rules, and methods to manage the effects of regionally significant infrastructure on significant indigenous ecosystems and habitats within the coastal environment to:

- (1) Allow regionally significant infrastructure to be located in areas with significant biodiversity values, if:*
 - a. There is an operational need or functional need for the activities to be located in that area and the coastal environment; and*
 - b. Clause (2) is applied to manage adverse effects.*
- (2) Manage adverse effects by applying the following hierarchy:*
 - a. Significant adverse effects are avoided where practicable; then*
 - b. Where significant adverse effects cannot be avoided and for all other adverse effects which are more than minor, they are minimised where practicable; then*
 - c. Where adverse effects cannot be minimised, they are remedied where practicable; then*
 - d. Where more than minor residual adverse effects remain following avoiding, minimising and remedial measures, biodiversity offsetting is provided where practicable; then*
 - e. If biodiversity offsetting is not practicable then biodiversity compensation is provided.*
- (3) When considering biodiversity offsetting or compensation proposals to have regard to the principles set out in Appendix 1C and Appendix 1D.*

22. This approach will eliminate the need to modify the NRP to better comply with the RPS, thus reducing significant costs in a further planning process. Additionally, it will recognise the extensive investments made in the current infrastructure and provide appropriate measures to ensure it is suitably managed and maintained in the long term.

Claire Hunter

20 March 2024

ATTACHMENT 1

WIAL OVERVIEW OF SEAWALL PROJECT

ATTACHMENT 2

ECOLOGICAL CHARACTERISATION OF LYALL BAY, WELLINGTON – NIWA, 2016

ATTACHMENT 3

**ASSESSMENT OF ECOLOGICAL EFFECTS OF THE RECLAMATION AND EXTENSION TO
WELLINGTON AIRPORT, AQUATIC ENVIRONMENTAL SCIENCES LTD, 2016**