

IN THE MATTER of the Resource Management Act 1991(RMA)

AND

IN THE MATTER Proposed Waikato Regional Coastal Plan

JOINT WITNESS STATEMENT (JWS) IN RELATION TO:

Topic: Ecosystems and Indigenous Biodiversity

26 November 2024

Note from the Facilitator: This JWS was reissued on 12 December 2024 after editing to delete (shown by strikethrough) paras 3.6.2 and 3.6.3 which are not relevant to item 3.6 and are correctly shown below in paras 3.7.1 and 3.7.2.

Expert Conferencing Held on: 26 November 2024

Venue: Distinction Hamilton Hotel & Conference Centre

100 Garnett Avenue

Te Rapa, Hamilton, 3241

Independent Facilitator: Marlene Oliver

Admin Support: Leah Newman, Waikato Regional Council

1. Attendance:

1.1. The list of participants is included in the schedule at the end of this Statement. The following experts for Waikato Regional Council are section 42A authors for other topics and attended this session largely as observers. As such they have not been included in the schedule in section 4 of this joint witness statement.

Angelina Yang (Planning)	Waikato Regional Council	Observer
Mariarna Te Tai (Planning)	Waikato Regional Council	Observer
Craig Briggs (Spatial)	Waikato Regional Council	Observer
Susan Brennan (Planning)	Waikato Regional Council	Observer

1.2. Note from the Facilitator: Vicki Carruthers (Planner) is a submitter.

2. Basis of Attendance and Environment Court Practice Note 2023

2.1. All participants agree to the following:

- (a) The Environment Court Practice Note 2023 provides relevant guidance and protocols for the expert conferencing session;
- (b) They will comply with the relevant provisions of the Environment Court Practice Note 2023;
- (c) They will make themselves available to appear before the Panel;
- (d) This statement is to be filed with the Panel and posted on the Council's website.

3. Matters considered at Conferencing – Agenda and Outcomes

3.1. Subtopic ECO 1 – SIBA methodology

- Methodology to identify significant indigenous biodiversity and characterisation into SIBA-A and SIBA-B.

3.1.1. Matters of agreement

- 3.1.1.1. Vicki Carruthers confirmed that the section 42A version of the Ecosystems and indigenous Biodiversity chapter satisfactorily addresses her submission in relation to threatened and at risk species in this chapter. Vicki Carruthers confirmed that apart from Objective 1, as identified below, the section 42A version of the Ecosystems and indigenous Biodiversity chapter of the proposed plan satisfactorily addresses her submission on this chapter and she has no further outstanding matters to be resolved at this expert conferencing session.

3.1.2. Outstanding Matters – Vicki Carruthers

3.1.2.1. Objective 1

Vicki Carruthers seeks that the word ‘and’ be re-inserted in objective 1. As notified all ecosystems and indigenous biodiversity were to be maintained. Removal of the word ‘and’ means they are only to be maintained where appropriate.

ECO-01 Protect and restore ecosystems and indigenous biodiversity

‘Ecosystems and indigenous biodiversity in the coastal marine area are maintained, ~~and~~ enhanced and restored where appropriate, and areas of significant indigenous biodiversity are protected.’

- 3.1.2.2. Hannah Palmer advised that she would reconsider the above request, noting that there is at least one other submission (from MPI) related to this specific matter. Hannah is to liaise with Vicki so that this matter can be considered at the planning expert conference session on 4/5 December.

3.1.3. Matters of SIBA mapping

- 3.1.3.1. Simon West considered that in some areas currently mapped as SIBA-A (A-24) the habitat of interest no longer exists this pertains to the polygons adjacent to Robinson Road, Whitianga.

- 3.1.3.2. Claire Webb confirmed that there is a high level of confidence that the SIBA layer reflects the ecological significance of the SIBAs mapped are based on the best available robust data. She acknowledges that the marine environment is dynamic and that there are limitations in mapping significant marine ecology as noted in the methodology report for the SIBA overlay (Section 32A information). She will update the polygons mentioned in Simon West evidence with the latest information that has come out as per Mike Townsend recommendations. The SIBA-A24 mapping will be updated in the section 42A addendum.

- 3.1.3.3. Tracey Lamason noted that the dynamic nature of the marine environment is relevant to use of SIBAs throughout the plan. This is best addressed in the specific rules, some of which are in later expert sessions (e.g. Disturbances and deposition and Structures)

3.2. Subtopic ECO 5 - NZCPS Policy 11, WRPS and SIBAs

- Application of NZCPS Policy 11 (avoidance directives) and WRPS to SIBAs

3.2.1. Matters of agreement

- 3.2.1.1. This related to the matter raised by Vicki Carruthers. Consistent with the record in para 3.1.1.1, Vicki confirmed that she is satisfied with the section 42A version and has no outstanding requests relating to this matter in the Ecosystems and indigenous biodiversity chapter

3.3. Subtopic ECO 7 – Development activities in SIBA areas and ‘functional/operational need’

- Consideration of amendments to ECO-P4 and ECO-P5 sought by AQNZ/CMFA, EDS, Taharoa Ironsands, and Transpower.

3.3.1. ECO-P5 and offsetting conditions

ECO-P5 Requirements when assessing a proposal under ECO-P4

‘Ensure the following when considering use and development under ECO-P4:

1. *Adverse effects are avoided to the extent practicable, having regard to the activity’s technical and operational requirement;*
2. *If ~~Ad~~verse effects ~~that~~ cannot be avoided, they are remedied ~~or mitigated~~ to the extent practicable*
3. *If adverse effects cannot be remedied, they are mitigated to the extent practicable*
- ~~3.~~ *4. Where ~~m~~More than minor residual adverse effects on the values of SIBA identified in Schedule 7, or on threatened and at-risk marine mammal and bird species identified in ECO-P1(2) and ECO-P1(3) ~~that~~ cannot be avoided, remedied or mitigated, these are offset in a manner consistent with the principles in Schedule 7C.*
- ~~4.~~ *5. ~~Significant~~ More than minor residual adverse effects on values of any SIBA-A identified in Schedule 7, or on threatened and at-risk marine mammal and bird species identified in ECO-P1(2) and ECO-P1(3) that cannot be offset are:*
 - a. *avoided; or*
 - b. *only experienced over a short-term; or*
 - c. *acceptable given the positive effects of the proposal on indigenous biodiversity values;*
or
 - d. *in exceptional circumstances, financial contributions may be considered*
- 6. Clauses (2) and (3) do not apply to the National Grid.’*

- 3.3.1.1. In relation to offsetting the ecologists were agreed that
- Offsetting would need to occur within the CMA to be in accordance with schedule 7C.
 - There are limited or no examples of offsetting within the CMA to date in New Zealand, although the ecologists consider that it is an ‘aspirational’ practice, but it is challenging.
- 3.3.1.2. On the basis of these opinions, the planning experts recommend that ECO-P5 wording needs to be reviewed.

3.3.1.3. Pauline Whitney and Grant Eccles raised concerns relating to the restrictions arising from the current wording of ECO-P4 and ECO-P5. This matter is deferred to the planning expert conferencing session on 4/5 December 2024 and specific to the EI expert conferencing on 2 December 2024 (National Grid).

3.3.1.4. Hannah Palmer advised that she would review ECO-P4 and ECO-P5 to be discussed at the planning expert conferencing session 4/5 December 2024.

3.4. Subtopic ECO 2 – New and amended SIBA and species, Schedule 7, NZTSC, and EIANZ guidelines

- Schedule 7 – Significant indigenous biodiversity areas:
 - Potential new SIBA, and addition of species to schedules
 - Amendments to existing sites and descriptions
- SIBA-B definition and values
- Value of EIANZ guidelines in assessing potential effects on SIBA.
- Using regional lists of threatened and at risk species
- Shorebird and seabird habitat within CMA, and foraging habitat vs critical land-based habitat.

3.4.1. Matter of agreement

3.4.1.1. Graeme Taylor is seeking amendments to SIBA Schedule 7 areas A2, A9, A13 and A23 as set out in his evidence. Claire Webb confirmed that she has reviewed this material and agrees with the amendments as proposed by Graeme Taylor. This agreement will be presented in the section 42A addendum version.

3.4.2. Unresolved matter - West Coast Marine Mammal Sanctuary

3.4.2.1. Shane Kelly sought the West Coast Marine Mammal Sanctuary be mapped as a SIBA area. Claire Webb agrees that the sanctuary meets the RPS criteria 1.

3.4.2.2. Chris Staite does not consider mapping the sanctuary as a SIBA to be the most appropriate way to identify the area in the coastal plan. He considers that there are other methods (more targeted provisions in the plan) that address impacts on marine mammals. He does note that it is mapped as an information layer in the coastal plan maps.

3.4.2.3. Shane Kelly identified that the main concerns relate to impacts on marine mammals from underwater noise, fishing, aquaculture, mining and wind farms. Chris Staite will review his position at the end of expert conferencing but at this point he considers that the provisions of the plan will adequately deal with these concerns without the restrictions associated with a specific mapped SIBA-A.

3.4.3. Matter of agreement – Extent of SIBA-B 19 and classification of part as a SIBA-A

3.4.3.1. Shane Kelly, David Taylor and Claire Webb agreed to extend the boundary of SIBA-B 19 at Rabbit Island, Moturua to include the *Galeolaria* area and reasonable area around it. This area does not include the existing marine farms because *Galeolaria* is not present within the farms. These experts will work together to prepare a new map. These experts

also agree that this subarea of SIBA-B19 (around Rabbit Island) is to be reclassified as a SIBA-A.

3.4.4. Matter of agreement - SIBA-B Definitions and Values

3.4.4.1. The ecological experts agree to amend Schedule 7 as follows:

***‘Significant Indigenous Biodiversity Areas – B (SIBA-B):** Areas which, due to their physical form, scale or inherent biodiversity values, are regionally significant because of their predominance of native vegetation, provision of indigenous habitat and/or vulnerable ecosystem types that also form important migratory pathways or ecological corridors in the coastal environment. They are considered ~~more resilient ecosystem types~~, to be ecosystem types that are more widespread throughout the region.’*

3.4.5. Matter of disagreement - Using EIANZ guidelines in assessing potential effects on SIBA.

3.4.5.1. Shane Kelly sought a definition of significant ecological effects as they relate to SIBA-B and suggested the approach used in the EIANZ guidelines may be appropriate.

3.4.5.2. Claire Webb and Dave Taylor do not consider that the EIANZ guidelines are appropriate to define significant adverse effects in an RMA context. They are industry guidelines developed outside of a legal and planning framework.

3.4.6. Using regional lists of threatened and at risk species – experts agreed to delete this agenda item.

3.4.7. Matter of disagreement - Shorebird and seabird habitat within CMA, and foraging habitat vs critical land-based habitat

3.4.7.1. Experts for Minister of Conservation sought changes to the wording of subclause 2.

“General Standards and Terms for activities in the DD – Disturbances and deposition chapter

The following standards and terms apply to DD-R1, DD-R2, DD-R3, DD-R4, DD-R4A, DD-R9A, DD-14, DD-R15, DD-R16, DD-R17, DD-R20 and DD-R21 for which compliance is required for these permitted or controlled activities:

...

‘2. The activity does not ~~take place in, or involve disturbance,~~result in damage or destruction ~~in of shellfish beds,~~ areas vegetated by mangroves, seagrass or saltmarsh, ~~or~~ bird ~~foraging~~ roosting and nesting areas ~~during nesting season~~’

3.4.7.2. MOC proposed wording is:

2. The activity does not ~~take place in, or involve disturbance,~~result in damage or destruction ~~in of shellfish beds,~~ areas vegetated by mangroves, seagrass or saltmarsh, ~~or~~ or ~~disturb~~ birds foraging, foraging, roosting or and nesting areas ~~during nesting season~~

- 3.4.7.3. Claire Webb, Mike Townsend and Simon West agree that foraging is important to be recognised. They agree that for some species foraging areas can be confined and for other species it can be dispersed.
- 3.4.7.4. Claire Webb is concerned about the workability of including foraging in the above standard which applies to permitted and controlled activities.
- 3.4.7.5. As this particular standard related to the Disturbance and deposition chapter this matter would be considered further in the expert conferencing on 2 December.

3.5. Subtopic ECO 8 – Mangrove removal provisions

- Approach to permitted removal of mangrove seedlings within SIBA-A (ECO-P8 and ECO-R8).
- Application of ECO-R11 and ECO-R13 to marina expansion.

3.5.1. Approach to permitted removal of mangrove seedlings within SIBA-A (ECO-P8 and ECO-R8).

- 3.5.1.1. Experts for MOC are seeking mangrove seedlings in SIBA-A be subject to a discretionary activity consent process rather than a permitted activity.
- 3.5.1.2. Hannah Palmer supports retaining areas in SIBA-A where mangroves are not currently present in that state.
- 3.5.1.3. Claire Webb and Mike Townsend support the section 42A approach which provides for mangrove seedling removal in areas where mangroves have never been present (ECO-P8 and ECO-R8)
- 3.5.1.4. Graeme Silver advised that having listened to the discussion by the Council experts, the MOC experts will review their submission and relief sought.

3.5.2. Application of ECO-R11 and ECO-R13 to marina expansion.

- 3.5.2.1. Tracey Lamason considers that for an expansion of existing marinas the removal of mangroves under rule ECO-R13 should be a restricted discretionary activity not a discretionary activity. ECO-R11 is a permitted activity rule which defaults to restricted discretionary activities but there appears to be an error in the plan in that there is no RDA rule for marina area expansion.
- 3.5.2.2. Hannah Palmer thinks that there may an error in the cascade of the rules and undertakes to discuss this with Tracey Lamason prior to the planner conferencing session on 4/5 December.

3.6. Subtopic ECO 4 – Fishing activities

- Consideration of effects on identified indigenous biodiversity from fishing activities.
 - How, and to what extent is the Waikato CMA being adversely affected by fishing activities?

3.6.1. Matters of agreement - How, and to what extent is the Waikato CMA being adversely affected by fishing activities?

- 3.6.1.1. The ecological experts agree that the adverse effects of mobile bottom contact fishing activities and the adverse effects related to fishing down of key predators on reef systems in the Waikato CMA are significant.

~~3.6.2. Matter of disagreement – Existing marine farms in sites identified in Schedule 7~~

~~3.6.2.1. Andrew Wilkinson requested a footnote be added in Schedule 7 to acknowledge the presence of existing marine farms at the time of plan notification and the identification of SIBA-A and SIBA-B.~~

~~3.6.2.2. Hannah Palmer disagrees with the inclusion of a footnote and does not believe it will alter the application of the SIBA to marine farming.~~

~~3.6.2.3. Claire Webb disagrees with the inclusion of the footnote as drafted in the AQNZ/CMFA submission as the existence of marine farms was not considered as part of her assessment.~~

~~3.6.2.4. Chris Staite noted that this issue is likely to be considered in other sessions such as aquaculture and planning.~~

~~3.6.3. Matters of disagreement – Assessment of adverse effects on indigenous biodiversity (ECO-P3).~~

~~3.6.3.1. Andrew Wilkinson seeks additions into ECO-P3 to recognise existing marine farms.~~

~~3.6.3.2. Hannah Palmer disagrees with the additions.~~

3.7. Subtopic ECO 3 – Existing marine farms in relation to Schedule 7 and SIBA areas

- Existing marine farms in sites identified in Schedule 7.
- Consideration of SIBA values in relation to aquaculture.
 - Assessment of adverse effects on indigenous biodiversity (ECO-P3).

3.7.1. Matter of disagreement - Existing marine farms in sites identified in Schedule 7

- 3.7.1.1. Andrew Wilkinson requested a footnote be added in Schedule 7 to acknowledge the presence of existing marine farms at the time of plan notification and the identification of SIBA-A and SIBA-B.

3.7.1.2. Hannah Palmer disagrees with the inclusion of a footnote and does not believe it will alter the application of the SIBA to marine farming.

3.7.1.3. Claire Webb disagrees with the inclusion of the footnote as drafted in the AQNZ/CMFA submission as the existence of marine farms was not considered as part of her assessment.

3.7.1.4. Chris Staite noted that this issue is likely to be considered in other sessions such as aquaculture and planning.

3.7.2. Matters of disagreement - Assessment of adverse effects on indigenous biodiversity (ECO-P3).

3.7.2.1. Andrew Wilkinson seeks additions into ECO-P3 to recognise existing marine farms.

3.7.2.2. Hannah Palmer disagrees with the additions.

3.8. Subtopic ECO 6 – Threatened, At-risk, and highly mobile species, and SIBA-B

- Protection for 'threatened', 'at-risk' and 'highly mobile' species.
- Distinction between the vulnerability of SIBA-A and SIBA-B areas in proposed plan.

3.8.1. Matters of agreement - Protection for 'threatened', 'at-risk' and 'highly mobile' species.

3.8.1.1. Hannah Palmer agrees with the request from EDS experts to broaden ECO-P3 (8) to extent that it recognises threatened and at-risk species. This will require consequential amendments to other parts of the plan for consistency.

3.8.2. Distinction between the vulnerability of SIBA-A and SIBA-B areas in proposed plan.

3.8.2.1. Dominic McCarthy sought distinction between the vulnerability of SIBA-A and SIBA-B areas in proposed plan. There are no additional ecological provisions to be discussed at this conference session.

3.9. Subtopic ECO 9 – Introduction of exotic plants

- Consideration of introduction of exotic plant species provisions in relation to aquaculture/exotic seaweeds (ECO-P11, ECO-R17 and ECO-R19).

3.9.1. Matter of disagreement - Consideration of introduction of exotic plant species provisions in relation to aquaculture/exotic seaweeds ECO-P11, ECO-R17 and ECO-R19

3.9.1.1. Andrew Wilkinson sought that the farming of seaweed could sit within the aquaculture chapter rather than also the Ecosystems and IB chapter.

3.9.1.2. Hannah Palmer considers the references in the Ecosystem and indigenous Biodiversity chapter are appropriate as it provides a framework for assessing the farming of exotic

seaweed where it could affect indigenous biodiversity. She does not support the changes to the definition of exotic plant nor changes to ECO-P11.

4. Participants to Joint Witness Statement

4.1. The participants to this Joint Witness Statement, as listed below, confirm that:

- (a) They agree that the basis of their participation and the outcome(s) of the expert conferencing are as recorded in this Joint Witness Statement; and
- (b) They have read the Environment Court’s Practice Note 2023 and agree to comply with it; and
- (c) The matters addressed in this statement are within their area of expertise;
- (d) As this session was held both online and in person, in the interests of efficiency, it was agreed that each expert would verbally confirm their position in relation to this para 4.1 to the Independent Facilitator and the other experts and this is recorded in the schedule below.

Confirmed in person: 26 November 2024

Expert’s name and expertise	Party	Expert’s Confirmation <i>Refer Para 4.1</i>
Andrew Wilkinson (Planner)	Aquaculture New Zealand, Coromandel Marine Farmers Association	Yes
Dr Dave Taylor (Marine science and Aquaculture)	Aquaculture New Zealand, Coromandel Marine Farmers Association	Yes
Shane Kelly (Marine ecologist)	Environmental Defence Society Inc	Yes
Simon West (Marine ecologist)	Hopper Developments Limited, Whangamata Marina Society Inc, Whitianga Marina Society Inc, Tairua Marine Limited	Yes
Tracey Lamason (Planner)	Hopper Developments Limited, Whangamata Marina Society Inc, Whitianga Marina Society Inc, Tairua Marine Limited	Yes – Attended for agenda items 3.1 – 3.5
Sydney Curtis (Marine Science and Indigenous Biodiversity)	NZ Sport Fishing Council	Yes
Dominic McCarthy (Coastal Science)	Stormhaven Limited	Yes – attended from 3.1 – 3.8

Grant Eccles (Planner)	Taharoa Ironsands Limited	Yes – attended for agenda items 3.1 – 3.3
Pauline Whitney (Planner)	Transpower NZ	Yes – attended for agenda items 3.1 – 3.3
Helen Kettles (Mangrove management)	The Minister of Conservation	Yes - Attended online for agenda item 3.5
Graeme Taylor (Seabirds and Shorebirds)	The Minister of Conservation	Yes - attended online for agenda items 3.1 – 3.4
Graeme Silver (Planner)	The Minister of Conservation	Yes
Vicki Carruthers (Planner)	Vicki Carruthers	Yes
Hannah Palmer (Planner)	Waikato Regional Council Section 42A author for ecosystems and indigenous biodiversity	Yes
Claire Webb (Ecology)	Waikato Regional Council	Yes
Chris Staite (Planner)	Waikato Regional Council	Yes
Michael Townsend (Marine Ecology)	Waikato Regional Council	Yes