Under the Resource Management Act 1991

In the matter of Hearing of Submissions on the Proposed Porirua District Plan

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Submissions of Progeni Limited, David Harpham, Sheryn Harpham and John Sharp.

26/10/2021

Hearing Stream 2 – Friday 4 November at 3.00pm

Submitted in draft form full of typos due to lack of time

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Significant Natural Area SNA084

Sheryn and David Harpham Submission 203

Sheryn Harpham as part of submission 203 requested that the PDP be updated to (203.1) “Amend SNA084 map removing any areas in Lot 9 DP 519099”

The basis for this is simply that the trees within the SNA084 area on Lot 9 have been cleared under Certificate of Compliance RC6561. There is no longer any “kanuka forest” in the areas of SNA on land previously Lot 9 DP519099.

The areas concerned are shown at left according to the published Proposed District Plan.

We invited council to inspect our land and we had a visit from Mr Goldwater and Dr Herbert to ground truth the property along with the adjacent Progeni land.

Unfortunately Mr Goldwater and Dr Herbert ran out of time and had to leave urgently so never got to inspect Lot 9.

We note that in Mr Goldwater’s evidence he presents on page 53 an incorrect version of the SNA boundaries. This was pointed out at the time and the response was that it was the one provided by council. See adjacent to left.

On page 27 of his evidence Mr Goldwater describes SNA084 at address 68 Exploration Way, with legal description Lot 8 519099 and his site visit observations. The information provided in the report is is incorrect. Lot 8 DP 519099 was not inspected. 68 Exploration Way was not inspected. Also these descriptions do not refer to the same property.

Mr Goldwater did not and does not claim to have inspected the SNA area on Lot 9 DP 519099.

However in the Section 42A report regards submission 203.1 it asserts the opposite:

> “Wildlands undertook a site visit to better understand this submission point. I consider that the planning maps should be amended in line with their expert evidence summarised as follows: *The boundary of the SNA has been amended to exclude (i) areas of indigenous vegetation that have*

recently been cleared and (ii) areas that are dominated by exotic species such as pine and eucalyptus."

This is incorrect.

Regards SNA084 in general Mr Goldwater asserts:

- that Kanuka forests are "rare and poorly protected in the Porirua District (less than 20% protected). This is incorrect.
  - See later "Kanuka scrub is not threatened." and "Kanuka scrub is well protected".
- that there is a stream within the SNA. This is incorrect.
  - as is evident from the aerial photos on council's website and an actual inspection. The land of Lot 9 519099 is over 160m away from the closest stream. In the closest stream there are no long fin eels as they can't get past Whitby Lakes.
- that properties in the SNA "provide stepping stone habitats for birds". Correct as for all habitats to one extent or another.
  - We think this is a spurious basis for dispossessing someone of their property rights.

We agree with Mr Goldwaters general comment to the effect that the boundary of the SNA should be adjusted to exclude areas that have been recently cleared. We observe that this has not been done for Lot 9 DP519099 and ask that it is done.

It is our reasonable expectation to be able to enjoy our land, orchards and garden and subdivide our land for our retirement and in general benefit from our investment and property rights. We have already arranged Right of Ways and Services and Easements for future subdivision. We are extending our orchard and continuing to sustainably harvest firewood. The SNA area on our land was also required to be used to locate stormwater treatment systems to further protect the harbour.

If our property rights are taken as an SNA it would be based on:

- Incorrect maps.
- Incorrect rarity assessments.
- Incorrect descriptions.
- Incorrect address and legal descriptions.
- No ground truthing.
- Incorrect evidence.
- And the fact that <u>any land</u> might form a stepping stone habitat for birds living in suburbia.

Under RMA section 85 we expect to win an appeal to have the SNA designation overturned on our land as a result of how patently unreasonable outcomes for us will be, and that there will be no significant benefit to anyone else in harming us.

Sheryn and David Harpham Submission 202.1

We have read the S42A analysis and the proposed way to address the issue of fire risks caused by expected climate change dry seasons and flammable native bush.

In our view the proposed replanting solution is no longer an SNA, but a carefully maintained green zone. In our case it is no longer Exploration Kanuka forest but something else contrived (because, as per the recommendation, the Kanukas and Manukas should be gone).

In our view this is indicative of council wanting to control our land and dictate our gardens and that the current indigenous environment values in this instance have nothing to do with the land grab.

The proposed solution does not address a future particularly hot summer and burnable material making us and family and assets at high risk. The S42A report says at 166 that an "SNA could disappear entirely if landowners followed FENZ guidance" which is exactly right and exactly as it should be when lives are at stake versus trees. Just how intrusive into peoples personal lives and safety does council intend to get? Allowing people to easily manage their own risk removes that risk from Council.

Sheryn and David Harpham Submission 202.2

"Amend SNA084 as it relates to Lot 5,6,7,8,9 and 10 DP 519099."

Our submission on this point relates to the existing consent notice protecting areas of bush negotiated with council to put this in as part of an eco subdivision that Progeni (wholly owned company) undertook. The areas affect neighbour's who bought on the basis that the consent notice areas would contain their storm water detention devices and provide freedom to maintain these areas sustainably but never-the-less keep the areas under tree cover.

The S42A report regards 202.2 says that:

> "Wildlands undertook a site visit to better understand this submission point. I consider that the planning maps should be amended in line with their expert evidence summarised as follows: *The boundary of the SNA has been amended to exclude (i) areas of indigenous vegetation that have recently been cleared and (ii) areas that are dominated by exotic species such as pine and eucalyptus."*
>
> This is incorrect. Nor does this address the question as asked.
>
> > Wildlands did not visit any of these sites as they ran out of time and the boundary of the SNA has not been amended.

We would still like the issue relating to Council over riding their own negotiated consent notice protections and agreements to be addressed or at the very least the boundaries of the SNA areas "snapped onto" the surveyed consent notice areas that are almost identical, as per recommendation from Wildlands where boundaries of SNA's should align with existing.

Sheryn and David Harpham Submission 201.1

"Set up that green belt in the currently rural land and again you will increase biodiversity with a lower economic effect."

We strongly believe in improving our green areas and in particular indigenous environment areas and have submitted that we should "Set up that green belt in the currently rural land and again you will increase biodiversity with a lower economic effect." There are a lot of us that want to work with council to achieve the physical outcomes of increased indigenous biodiversity. In our view this is even better than "protection" in that it is protection plus improvement. In our view protection isn't about the individual twigs it is about the overall outcome.

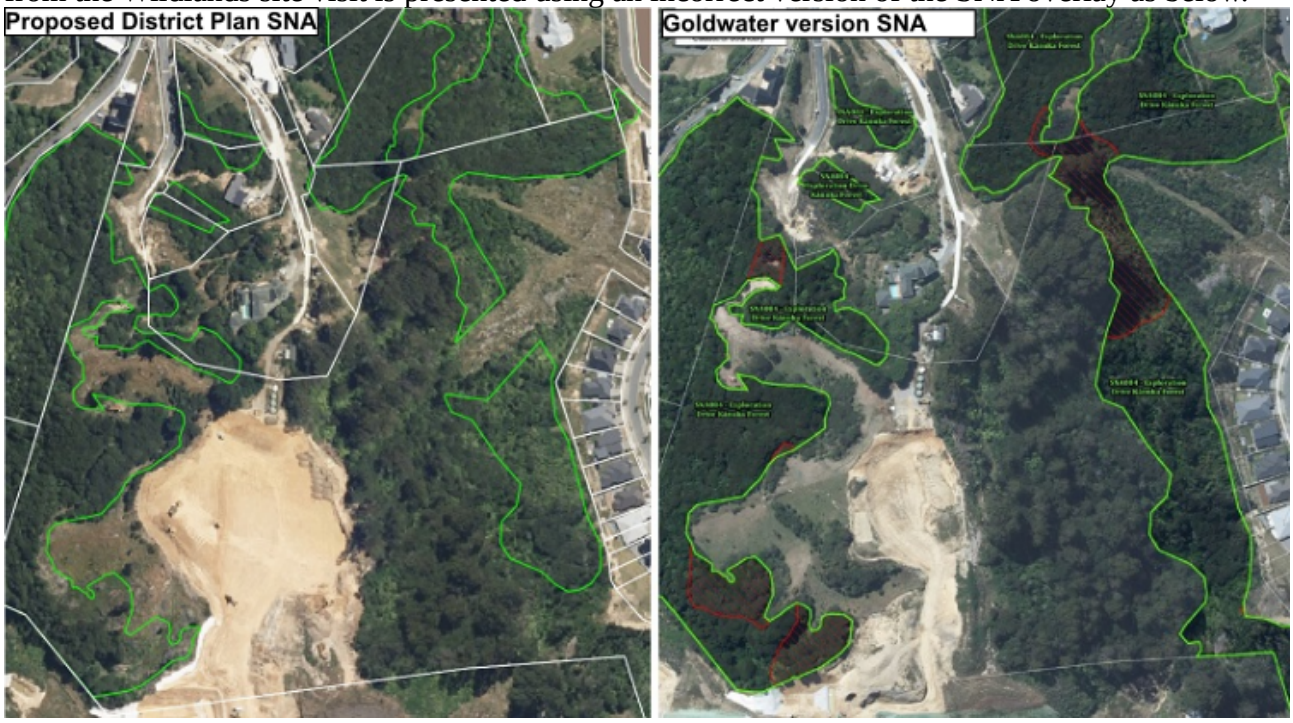
However the S42 Report says:

> "226. Taking a purely non-regulatory approach would be inconsistent with this national and regional direction. "

We thoroughly disagree with this casting of the issues. However it seems to exemplify the flawed approach of council who are trying to win an academic semantics debate and completely missing that they are not at war with the rate payers. Council is incorrect and frankly threatening to write off working with the rate payers other than by coercive means. We never stated that we preferred a purely non-regulatory approach, just wanted tools to help improve outcomes.

Progeni Limited Submission 201.1
"271.1 Amend the Significant Natural Areas overlay to exclude the areas noted in the attached report."

The S42A Report has accepted this point in part. However, we note that the Goldwater evidence from the Wildlands site visit is presented using an incorrect version of the SNA overlay as below.



There are a number of areas on this site and in the rush to get through things, Wildlands has missed a few adjustments.

The issue of the incorrect overlay map was raised at the time but it was stated that the version Wildlands were using was as supplied by council. This raises considerable confusion as to what is intended by the evidence and S42A Report. Which map overlays apply.

Regards SNA084 in general Mr Goldwater asserts:

- that Kanuka forests are "rare and poorly protected in the Porirua District (less than 20% protected). This is incorrect.
  - See later "Kanuka scrub is not threatened." and "Kanuka scrub is well protected".
- that there is a stream within the SNA. This is incorrect.
  - as is evident from the aerial photos on council's website and an actual inspection. Progeni's land and the SNA does not contain a stream. In the closest stream there are no long fin eels as they can't get past Whitby Lakes.

- that properties in the SNA "provide stepping stone habitats for birds". Correct as for all habitats to one extent or another.
  - We think this is a spurious basis for dispossessing someone of their property rights.

We agree with Mr Goldwater's general comment to the effect that the boundary of the SNA should be adjusted to exclude areas that have been recently cleared. We note that we hold a recently approved Certificate of Compliance allowing ongoing clearing that is still underway. This Certificate provides for clearance of all vegetation from our residential zoned land. We have subdivision works and earthworks consents that are in process and future subdivision applications lodged (before notification of the PDP) and other subdivision applications that are imminent.

It is our reasonable expectation to be able to develop and subdivide our land and generally benefit from our considerable investment and property rights. We also expect the city to gain considerable benefit from having urban zoned land used for the purposes set out in the current and proposed district plans.

If our property rights are taken as an SNA it would be based on:

- Incorrect maps.
- Incorrect rarity assessments.
- Incorrect descriptions.
- Incorrect address and legal descriptions.
- Incorrect evidence.

Under the RMA section 85 we expect to win an appeal to have the SNA designation overturned on our land as a result of how patently unreasonable outcomes for us will be and how there will be no significant benefit to anyone else to having non-threatened and otherwise well protected regrowth prevent subdivision from happening next to the new residential street of the Waitangirua Link Road. We could be even more sure of winning such a case if we exercised our right to clear all vegetation under our existing Certificate of Compliance just to emphasise the point that we are entitled to. This is something that we are hesitating to do in hopes of saving both our investment and as many trees as reasonable given the varied nature of the terrain and value of the bush.

We think that it is appropriate for council to recognise that they risk perverse effects if they force land owners to clear land of indigenous scrublands just to be sure of preserving their investment.

Significant Natural Area SNA088

John Sharp submissions 222.1 and 222.2

These submission points have been miss summarised by council and not addressed at all in the S42 Report.

This submission requests “that the boundary of the SNA be changed to represent the vegetation that is on our land.”

Below is an aerial photo of the land relating to these submissions from LINZ open data portal.

As can be seen there is a substantial area without vegetation that is covered by the SNA area.

We request the same treatment as other submitters, that areas that are clear of indigenous biodiversity be excluded from the SNA.

For some reason council do not mention my submission in the S42A Report. We do have some comments about the evidence from Mr Goldwater on behalf of council relating to SNA088.

Regards SNA088 relating as described in Proposed District Plan SCHED7 Significant Natural Areas:

- Kanuka forests are not threatened and are well protected already
  - See later “Kanuka scrub is not threatened.” and “Kanuka scrub is well protected”.
- there is a stream within the SNA but we are unfamiliar with any wetland anywhere close to our land and don’t see this as relevant allocation to the property.

- We have lived here 30 years and never heard or seen a barking gecko and neither has anyone ever mentioned one. We think this is speculation. Show us the evidence.
- In what way can our property possibly be an acutely threatened land environment except that council are threatening subdivisibility.
- Surely these things need some supporting evidence or justification. How can I ever counter such speculation. You may as well ask me to prove a moose doesn't live in the area.

We agree with Mr Goldwater's general comment to the effect that the boundary of the SNA should be adjusted to exclude areas that have been recently cleared. We note that we hold a Certificate of Compliance allowing ongoing clearing that is still underway. This Certificate provides for clearance of all vegetation from our residential zoned land. We have subdivision works and earthworks consents that are in process and future subdivision applications lodged (before notification of the PDP) and other subdivision applications that are imminent.

It is our reasonable expectation to be able to develop and subdivide our land and generally benefit from our considerable investment and property rights. We also expect the city to gain considerable benefit from having urban zoned land used for the purposes set out in the current and proposed district plans.

If our property rights are taken as an SNA it would be based on:

- Incorrect maps.
- Incorrect rarity assessments.
- Incorrect descriptions.
- Unsupported "evidence" of a nature that can't be easily countered.

Under the RMA section 85 we expect to win an appeal to have the SNA designation overturned on our land as a result of how patently unreasonable the outcomes for us will be and how there will be no significant benefit to anyone else to having non-threatened and otherwise well protected regrowth prevent subdivision from happening. We could be even more sure of winning such a case if we exercised our right to clear all vegetation under our existing Certificate of Compliance just to emphasise the point that we are entitled to. This is something that we are hesitating to do in hopes of saving both our investment and as many trees as reasonable given the varied nature of the terrain and varied quality of the bush.

We think that it is appropriate for council to recognise that they risk perverse effects if they force developers to clear land of indigenous scrublands just to be sure of preserving their investment.

Progeni submission: Section 32 report is inadequate.

Progeni Limited as part of submission 271.2 expressed the view that “the section 32 report is seriously wanting”.

It is now our considered view that the section 32 report is so non-compliant with the requirements of the RMA and creates such a false narrative that it is not reasonable to base the PDP policy and rules upon it.

It is implicit in the criticism that the Section 32 issue **must be addressed**. The further we look into matters the bigger the failings in the section 32 report appear to be. Unfortunately we have not had enough time in this process to fully address these failings and we request further time to explore with the commission just what has gone so wrong here.

In the following pages we start to address some of the false narrative that council have created. We do this on behalf of ourselves (David Harpham, Sheryn Harpham, John Sharp, Progeni Limited) and a growing number of people that we have been discussing this with. This assessment is only just getting started. We would welcome more time and a genuine dialog about how to get to good outcomes.

Our very sincere apologies for the lack of formatting and no doubt the appalling spelling and grammar. There has not been enough time available for us even to read through our own work here by presented.

Council's narrative of:

1. Ongoing decline in indigenous biodiversity.
2. The status quo policies and rules are a failure.
3. Council are required to enact draconian rules.
4. Council are acting in a reasonable way to preserve property rights.
5. Outcome of proposal will be improved environment.
6. Extensive consultation has not uncovered significant opposition.
7. Affects on SNA owners are mitigated.
8. No social and economic or social assessment is worth bothering with.

IS INCORRECT AND OR HIGHLY MISLEADING

The reality is that:

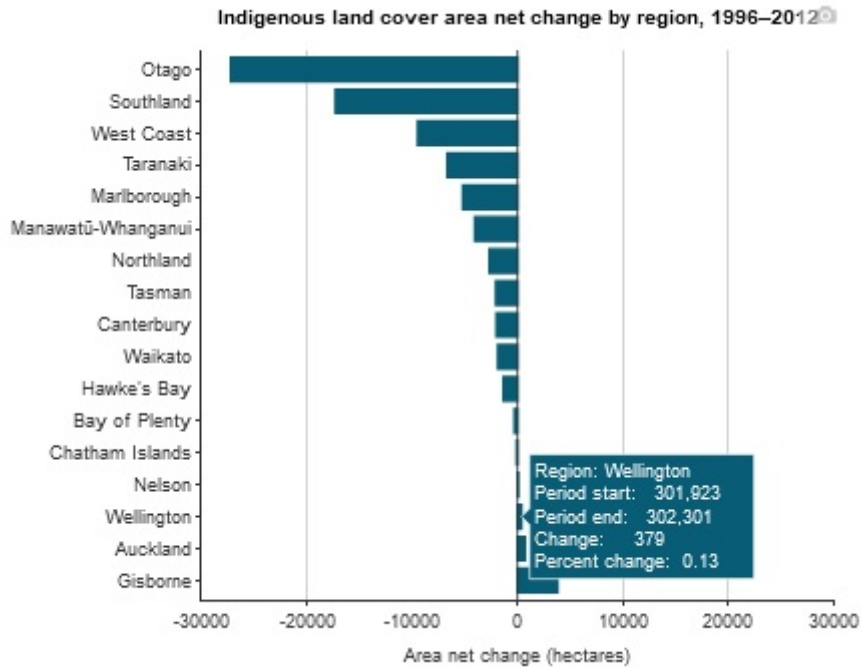
1. Locally there are ongoing increases in indigenous biodiversity.
2. Success of the status quo under the stewardship of urban ratepayers is working.
3. Council have seriously overstated the protection requirements.
4. Council's proposed rules effectively take away almost all property rights within SNA.
5. The threat to control land owner interests is resulting in perverse outcomes.
6. There is a long and public history of significant opposition to the "land grab".
7. Many SNA owners are in despair in the face of the expensive supposed mitigation process.
8. The impacts on many people are huge, unjust, unreasonable and life shattering.

Council's narrative and rules and select damage to a few are such that they violate the following:

A) the Bill of rights act section 27(1) which requires the observance of natural justice by public authorities;
B) the Land Transfer Act purpose of managing the interests in land. Including in plants and trees on land;
C) the Public Works Act principles of compensating for taking of land interests and only taking such interests when truly required;
D) the ethos of land rights that New Zealand has been built on;
E) the reasonable property rights protected under RMA section 85.
F) the RMA section 7 requirement to have particular regard to the ethic of steward.
G) the RMA section 32 requirements to consider alternatives and economic and social impacts
H) the RMA section 76(3) requirement to take into account the adverse effect of perverse outcomes.
I) RMA section 7 requirements to have particular regard to other things as well as biodiversity values.

Council's narrative of ongoing decline in indigenous biodiversity is incorrect.

Council's RMA Section 32 report Evaluation Report Ecosystems and Biodiversity (S32 Report) on page 2 observes that "A substantial loss of biodiversity has been experienced nationally with more than 70,000 hectares of native vegetation lost across New Zealand between 1996 and 2012." And references Environment Aotearoa 2019 and presumably adding together and rounding the numbers on page 34 to get the 70,000 hectares. However "Environment Aotearoa 2019" in turn references their source to Indigenous land cover | Stats NZ. If one explores the useful tool on the Statistics New Zealand web page one finds that although there has been a negative trend nationally there has actually been a positive trend for the Wellington region as below.



Our position is that the RMA and RPS do not intend, and it makes no sense for, the Porirua District (~17,500s hectare of land) to try to make up for the net 70,000 hectares of indigenous loss nationwide. Either on a particularity of species basis or land area.

The narrative throughout the S32 Report misleadingly and constantly reinforces the impression of ongoing decline in indigenous biodiversity in the local Porirua Context. The S32 report includes the terms "restore", "further decline", "restoration", "increased urban growth ..result in removal of indigenous vegetation", "halting the decline", "remaining indigenous biodiversity", "ongoing decline" .... These terms are inappropriately used. Effectively giving an incorrect narrative.

The reality is that locally there are ongoing increases in indigenous biodiversity.

The following image is an aerial photograph from Porirua City Council's Historical Imagery Comparision Tool with "Aerials 1942" selected. Apparently copyright "*LINZ, Eagle Technology | Eagle Technology, LINZ, StatsNZ, NIWA, DOC, © OpenStreetMap contributors, Natural E"*

The aerial image shows that in or around 1942 there was almost no vegetation, indigenous or otherwise in the Porirua basin.

One can therefore reasonably conclude that all the council's identified "Significant Natural Areas" are a product of relatively recent growth under recent policies.

In fact a quick perusal of the evidence suggests that most of the increase in biodiversity has occurred since 1970 with the development of urban areas after the founding of Porirua.

Council's narrative that the status quo policies and rules are a failure is incorrect.

The S32 Report on page 2 asserts that "The operative plan does not achieve the level of protection required by the RPS" and in the table starting on page 52 does a hatchet job on the status quo. Just one example of distortion is examined below:

RMA section 31(1)(b)(iii) reads

> "(1) Every territorial authority shall have the following **functions** for the purpose of giving effect to this Act in its district: ....(b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of—....(iii) the maintenance of indigenous biological diversity."

Where like any **function** the weilder can apply or not as appropriate.

However this is distorted to be described as

> "**requirement** under s31(1)(b)(iii) to control any actual or potential effects of the use, development or protection of land for the purpose of the maintenance of biological diversity."

The purpose of giving effect to the Act with judicious consideration of a range of competing objectives is different to a **requirement** to take full draconian control. The S32 Report however asserts without evidence that the proposed rules will achieve control of any actual or potential effects.

On the other hand the S32 Report asserts that:

> "*the status quo objective is not consistent with s31(1)(b)(iii) as emphasis is placed on 'managing ecosystems in a sustainable manner' rather than protecting them from subdivision, use and development.*"

However, this is again quite misleading. The quote never actually appears in the current District Plan. And in any case RMA section 6 states that ....

> *"all persons exercising functions and powers under it, in relation to managing the use, development, and protection of natural and physical resources, shall recognise and provide for the following matters of national importance: ....(b) the protection of outstanding natural features and landscapes from inappropriate subdivision, use, and development: .... (c) the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna:"*

The S32 Report repeatedly asserts that the status quo is not working and that controls are insufficient just because of a view that controls are required. The failure to succeed or fail is judged by the author based on the flawed semantics and not evidence of outcomes or knowledge of how things actually work.

It is a pity that the S32 Report does not provide the data on outcomes that one imagines has been collected as required per RMA S35(2).

The entire table purporting to compare the status quo with the new proposal is semantic argument without reference to evidence of outcomes or acknowledgement of the proven perverse effects or even apparently awareness that the ethic of stewardship is important. It spins a view that the status quo is not working and that draconian control will be successful because the assertion that this what is mandated.

The reality is that the success of the status quo under the stewardship of urban ratepayers is working.

The evidence (examining historic photos) is over-whelming that the Porirua City Council status quo polices with due regard for the ethic of stewardship by urban owners is correlated with significant overall increases in biodiversity. Put simply, people plant trees where they have a vested interest to. All over the world one can tell the state housing areas from the privately owned areas by the density of the tree cover.
The photo below is looking east across part of Cannons Creek in Porirua East in May 1966 and looking towards future Whitby.

The aerial photo to the left shows modern Cannons Creek towards the centre bottom and Whitby in the top right.

We have homes. We have trees. The status quo is working.

The Wellington Regional Policy Statement on page 50 admits that "The area of indigenous ecosystems has been in decline since humans first settled in our region. This loss greatly accelerated from the time of European settlement. Around 70 per cent of the indigenous forest and more than 90 per cent of the wetlands that existed in 1840, have been cleared for agriculture and urban development."

While the RPS statement above may have relevance in some places it is clear at least that in the Porirua basin that settler clearance was for agriculture in the first instance and not for urban development. The urban development has been associated with an increase in biodiversity. It is also clear that the assertion of ongoing decline is not descriptive of the last 50 years in Porirua.

We note that, if there are losses of vegetation in other locations in New Zealand or other locations in Wellington, it is inappropriate to burden Porirua City with making up for such losses. If our city was to take on all such burdens for all other places then there would be no room left for our city.

Contrary to the assertions in the S32 Report, the status quo has proven highly successful in allowing indigenous biodiversity regeneration. Yes, land owners clear and trim the trees they plant, but the trees grow back vigorously and on balance have made great gains.

Meanwhile Porirua has homes and trees and the status quo policies are working well to provide increasing biodiversity. This is even the case despite there being no specific urban vegetation protection in the district plan for the last 8 years and with a threat notified to owners of draconian burdens for rate payers if they keep the trees.

For seven years we have fought to save our trees and our property rights. However if we must pick only one it will be our property rights.

To make it harder for people to remove trees is to discourage them from planting trees in the first place!

Councils narrative that Council are required to enact draconian rules is incorrect.

Apologies that we are out of time. This RMA thing is a monster.

Suffice to say that if one reads the RPS and along with Identifying and protecting significant indigenous biodiversity in the Wellington region.pdf which is the Greater Wellington Regional Council's guide to interpreting the RPS and also the further referenced material: RMA Quality Planning Website then it becomes clear that there is valid interpretation that district council's will

value the ethic of stewardship (The RPS p52 says "The restoration of ecosystems relies upon the good will and actions of landowners.") and that starting points for local targets are 30% of significant remnant ecosystems protected and 20% of degraded / regrowth ecosystems protected. Also protection includes things like free access to ecologists and cooperation in finding a site by site balance for property rights versus ecosystem rights.

Council have seriously overstated the protection requirements.

While much has been made in the council policy analysis of the supposed possibility of subdivision and building within a Significant Natural Area due to generous appearing rules, the devil is in the detail.

Imagine a property owner who previously could have fitted twenty lots (with trees) onto a one hectare property. They will now be faced with numerous expensive reports and analysis without any real hope of doing the same level of development as previously. But they may be fooled into trying.

The applicant must go through an excruciating sequence of steps. With each process there is a got-ya trap where it will be pointed out that "Many biodiversity values cannot be offset ...". The last gasp hope for the applicant is the biodiversity compensation rung. But wait "a decision maker must consider the principle that many indigenous biodiversity values are not able to be compensated for"

The poor applicant will have to see if they can find some land to trade for the land they want to develop: "first at the site, then the relevant catchment, then within the ecological district."

The final trick is that there is almost no land available under the policy that would meet council's standards for biodiversity compensation. As the council's Section 32 analysis says on page 32:

> *"Consequently, the majority of existing indigenous vegetation is captured within the SNA overlays and any remaining examples outside the SNAs would be very limited so that most of the indigenous vegetation would be subject to the proposed regulatory controls. In addition, controls on general (non-SNA) indigenous vegetation are included the following identified overlay chapters; o Outstanding Natural Features and Landscapes; o Special Amenity Landscape; and o High Natural Character areas. • These provisions limit the general removal of indigenous vegetation outside of SNAs. The combined extent of these overlays together with the comprehensive SNA coverage is such that there would be little indigenous vegetation not protected. "*

In Progeni's experience when subdividing, Porirua City Council officers are already hugely protective of any vegetation.

ECO-P2 says:

> *"Avoid adverse effects on identified indigenous biodiversity values where possible."*

This reminds me of a recent new article about the arbitrary rule of bureaucrats which said:

> *"The rule of law means there is one clear set of rules, based on values and principles that everybody understands, and they are enforced.*
> *Meanwhile, rule by bureaucrat tends to be arbitrary: made by human beings whose moods and decisions sometimes appear to come down to what they had for breakfast that morning."*

Lots of things are possible if cost is not a factor. Such policy wording as ECO-p2 puts enormous discretionary power in the hands council officers and pressures them to stop/avoid any development.

Even worse is probably the subdivision rules which for the most part stop all development in an SNA but allow for totally discretionary decisions. These may be arbitrary or as writer has experienced with such power, withheld based on demands for gifts.

The net effect of the rules, although described in reasonable terms, will be to substantially curtail development anywhere that a property owner has previously nurtured native bush.

Expect perverse outcomes relative to objectives

There is a significant body of literature that details how conditional removal of property rights from land owners risks the land owners avoiding the condition that would result in the loss of rights.

One example is documented in the case of landowners pre-emptively destroying habitat for endangered red-cockaded woodpeckers in the forest of North Carolina in order to avoid potential land-use regulations designed to protect those very habitats.

Such property rights saving behaviour is readily predictable. An example (before and after aerial photos shown below) of this at work in the Porirua situation is the immediate clearance of 12,000m2 of kanuka scrub on a property where the owner had nurtured the trees from bare paddocks but was told of council's intention to dispossess him by use of the new Significant Vegetation Areas if such habitat remained.

Progeni has also cleared several hectares in anticipation of the Porirua City land grab. We intend significant further clearance. This is just prudent business practice in response to what would otherwise be a multimillion dollar land grab by council. We informed council that this would be our response to the policy proposal. We cemented this message by applying for (and were granted) a Certificate of Compliance to do the clearance. And yet council are proceeding to force our reluctant hand as regards scrub clearance. Our previous subdivisions have minimised any similar clearance but the council proposals preclude such future behaviour.

There are many many landowners around the country taking similar measures to protect their property interests.

Such pre-emptive tree removal is not just likely to be done by budding developers, it is also likely by home owners who want to secure (without excessive costs and hassle) their:

Future views

Light wells

Solar gain

Health and safety (against mould and fire threats and random tree collapse).

One can expect that large numbers of people are now going to hesitate to let any more indigenous vegetation grow anywhere on their land for fear of being further dispossessed. When one considers the potential reduction in future new indigenous biodiversity that the council's policy may cause, it is likely that the net longer term outcome of council's policy will, perversely, be the opposite of the stated objective.

Property rights and reasonable expectations

The Land Transfer Act 2017 is intended to ensure that New Zealanders can have "security of ownership of estates and interests in land" (LTA s3). LTA Section 5 defines land to include without limit "plants, trees, and timber on or under land".

Wars are still fought over land rights. Our economy is largely founded on land rights. Almost all our ancestors came here due to the search for stable land rights.

Interests in land are vitally important to people and also typically their major assets. Peoples social, mental and economic health is often tightly tied to their land interests. Land provides our sources of food, sources of energy, sources of pleasure, space to play, a financial store, our joy of living, a place to live.

The Resource Management Act intersects with LTA interests in land to the extent that the RMA purpose is to "promote the sustainable management of natural and physical resoures" where "sustainable management means managing the use, development, and protection of natural and physical resources in a way, or at a rate, which enables people and communities to provide for their social, economic, and cultural well-being and for their health and safety while (a) sustaining the potential of natural and physical resources (excluding minerals) to meet the reasonably foreseeable needs of future generations; and (b) safeguarding the life-supporting capacity of air, water, soil, and

ecosystems; and (c) avoiding, remedying, or mitigating any adverse effects of activities on the environment.

It would seem reasonable given the purpose of the two acts that one would need an exceptionally good reason and an exceptionally robust process before one used the RMA to effectively dispossess even one of the people of their economic, social and cultural well-being and reducing their health and safety and ability to service their families reasonably foreseeable future needs.

Furthermore one would reasonably expect that no interpretation of “promote sustainable management” as per the RMA would be used by stealth to effectively create an interest in land for the council that trumps all the other registered interests under the LTA. This would undermine the purposes of the both acts.

More specifically we have neighbours with registered unformed right of ways and registered covenants regards trees on our land. These neighbours have specified property rights providing for them to unilaterally clear trees. We have no control over this but may end up being fined by council under proposed rules due to our neighbours reasonable actions enforcing their land rights. These registered owners of the interests in our land have not been provided an opportunity to comment as part of this district plan process. The proposed rules put us in a legal bind that is untenable.
We have registered plantation forests overlapping with the Significant Natural Areas and our reasonable expectation of benefiting from this forest is severely impacted by the proposed rules. We may have chosen to convert our exotic forest into an indigenous crop (eg manuka honey plus kumara) but the proposed rules where council, ecologists and arborists have to be paid for every pruning decision are extremely prohibitive.

We have invested in services and roads and earthworks and consents and have reasonable expectations of future subdivision. However under the proposed rules we may have missed the boat. Vegetation that no longer exists will need to be considered by council, ecologists and arborists and then hypothetical biodiversity compensation found.

We have trees addressed under registered consent notices on titles with council agreement for providing sustainable management. These are trees that we have nurtured. The registered and negotiated rights and obligations are tailored to the particular properties. These rights will be destroyed by the proposed rules.

Definitions of significance and protection

The Resource Management Act is relatively silent on the meaning of the words “significant” and “protect”.

The lack of definition has caused bureaucrats huge difficulties and not unexpectedly resulted in their usual response of erring on the most cautious side for their jobs sake. However it is implicit in the very lack of definition that the intent of the RMA is to provide for individual regions and individual district authorities to interpret these terms based on local context.

Are regenerating beach forests “significant” in the iconic tussock lands of Central Otago? Are they more or less significant because of their scarcity in that region? Are they significant because they must be removed to preserve the tussock lands or because they must be preserved so they may overtake the tussock lands? Are the forest lands on the Westcoast significant because of their great size? Do they become more or less significant if they get smaller?

Significance is about local context and relativity issues. A recently reported debate on the Westcoast illustrates the problem. This is an area with very large tracts of indigenous vegetation. The Department of Conservation already manages around 84% of the Westcoast. Legal opinion reported regards the foregoing debate has said that not going through the Significant Natural Area identification process would be unlawful. There has now been an additional 36% of private land identified as Significant Natural Area. Clearly there is no upper limit to the percentage of the country that ecologists might identify as Significant Natural Area.

Does this mean that ultimately people will be pushed into the sea? That is up to the PDP processes.

Taking a regular inventory of Significant Natural Areas is a good thing from a resource management point of view. The methodologies should be robust and consistent over time so that meaningful monitoring can be done. The sort of anomalous reclassification that happened with the manuka and kanuka based on temporary anxiety about myrtle rust is inappropriately inconsistent.

Given the range of objectives in the RMA covering economic and social goals as well as natural areas is would seem appropriate to address the local context and set some local goals as regards the quantum of various types of indigenous biodiversity that will best satisfy goals in a balanced way. This step seems to have been missed by our council officers.

Once some targets have been set on a catchment by catchment basis then one can decide an appropriate level of "protection" (to keep safe from harm or injury). It is our position that in a context of plenty on the ecosystem side of the ledger, then more weight can be given to the economic and social side of the ledger. The targets of 30% and 20% used by the RPS statement for determining significance are examples of this thinking in the Wellington region.

Kanuka scrub is not threatened or rare.

The Manuka & Kanuka Plantation Guide - Manuka-plantation-guide-landcare-April2017.pdf (Boffa Miskell Ltd) variously considers Kanuka as below:

- pg IV : Mānuka and kānuka are fast-growing, robust plants ubiquitous in scrub, shrublands and forest margins throughout the North Island, and thrive in almost all land types from geothermal areas and wetlands, to dunes and dry hill slopes.
- pg 1: "traditionally reviled by farmers as an invasive weed, these historic and cultural uses have stimulated scientific research into the beneficial properties of mānuka and kānuka, and how those properties can be extracted for use by people"
- pg 2: "Currently the North Island has over 720,000ha of vegetation cover classified as mānuka/kānuka, which is 6% of the total land area."
- Pg 64: "Until there is industry-led or Government guidance on how to deal with indigenous vegetation managed for productive uses, landowners will need to take responsibility for keeping up to date with local plan requirements." ... "While the policies, criteria, and rules may permit vegetation management when you establish a plantation, subsequent plan reviews may change that. In many cases, existing significance criteria mean that establishing mānuka/kānuka plantations is effectively permanent land retirement. Even when the plantation has become mature and production for honey or oil has slowed or ceased, clearance and replanting or conversion to an alternative crop may not be possible"

Up until 2017 Kanuka was classified (under the 2008 New Zealand Threat Classification System manual) as "Not Threatened". See the entry for Kunzea ericoides (botanical name) in the Conservation status of New Zealand indigenous vascular plants, 2012.

In Conservation status of New Zealand indigenous vascular plants 2017 however, all Kunzea where reclasssified as "Nationally Vulnerable" and observing a basis of "Data Poor".

Such a classification is an anomaly as this classification would not normally apply to a species that covers 720,000 ha of the North Island (see 2.1(c)). The manual (see 2.2) only allows the "Nationally Vulnerable" classification to consider species with a current status where "the total area of occupancy is ≤ 10,000 ha".

It would appear from the discussion on page 7 of the 2017 update that as a result of sudden angst about the new perceived threat of "myrtle rust" at a special panel meeting it was decided that "as a precautionary measure the panel has designated all the New Zealand Myrtaceae previously considered to be Not Threatened as 'Threatened'"

Since that "concerned" meeting myrtle rust has spread across a lot of New Zealand including the Porirua basin and there is growing evidence and confidence that at least as regards manuka and kanuka (members of the Myrtaceae family) the panic was unwarranted. Refer to:

- In Impacts of myrtle rust in New Zealand since its arrival in 2017 it is observed that "Mānuka showed only 0.02% prevalence on nearly 20,000 mānuka plants examined, which was the second-lowest prevalence out of the 11 taxa recorded with myrtle rust. This result is consistent with current information that mānuka is seldom observed with myrtle rust in the field."
- In Resistance of New Zealand Provenance Leptospermum scoparium, Kunzea robusta, Kunzea linearis, and Metrosideros excelsa to Austropuccinia psidii it was observed that "Resistance to the pandemic strain of Austropuccinia psidii was identified in New Zealand provenance Leptospermum scoparium, Kunzea robusta, and K. linearis plants."

While the speculative inclusion of a suspected biological threat to kanuka is useful for informing policies around biosecurity and associated responses it has no place in policy designed to address human caused reductions in indigenous ecosystems. If the threat is real and all kanuka are wiped out none of the council's proposed policies will have made a difference. If the threat is not real then there was still no need for the council's policies.

We note that on page 3 of METHODOLOGY FOR THE ASSESSMENT OF ECOLOGICAL SITE SIGNIFICANCE IN PORIRUA CITY by Wildlands notes that the myrtle rust issue had escalated the apparent threat for some species but goes on to say that presence of manuka and kanuka at a site should not trigger the rarity criteria because these species are currently widespread and common in the local environment. Never-the-less kanuka is described as rare in multiple places in the council narrative.

The S42A Report also observes "163. Manuka and kanuka are common throughout the City"

Kanuka scrub is already well protected

It has been asserted in a number of places that Kanuka forests are not well protected. In Mr Goldwater's evidence he says:

"Kanuka forest and scrub are representative of current vegetation types, which are rare and poorly protected in the Porirua District (less than 20% protected)."

This seems to be a somewhat key figure in that under the RPS Policy 23(a):

"Representativeness: the ecosystems or habitats that are typical and characteristic examples of the full range of the original or current natural diversity of ecosystem and habitat types in a district or in the region, and:
(i) are no longer commonplace (less than about 30% remaining); or
(ii) are poorly represented in existing protected areas (less than about ***20% legally protected****). "*

Our position is that the 20% figure for an ecosystem such as Kanuka forest and scrublands is something of a target for the level of protection needed under the RPS. If you already have 20% or more of an ecosystem protected in your district then no need to identify that ecosystem as significant. If you have less than 20% then identify all those ecosystems areas as significant with a view to moving to 20% protected. This would imply that the rules could say fairly that:

- In Porirua we have ??% protection for Kanuka forests and scrub.
- Therefore the target is for those with Kanuka forests and scrub preserve an appropriate 20 – ??% of your SNA.
- The load is evenly shared and not too arduous.

Instead Porirua Council proposed rules appear to say that if we don't have 20% protected then we should protect it all! Under this scheme if we had a more invasive natural scrub and it was pest all over the district then PCC would protect the whole district.

At any rate the 20% figure becomes vitally important either way. We are unaware of the basis on which it is asserted that less than 20% of Kanuka has been protected in Porirua. No figures for either the denominator or numerator are provide and no references have been presented.

Is scrub land largely unprotected because there is a lot of it? And why would you protect what is a nuisance plant to farmers?
Is scrub land in fact already well protected because we have lots of reserves and covenants on it.

The following provides a robust indication that we have well over 30% of kanuka forest and scrublands already protected in Porirua District.

The methodology has been to:

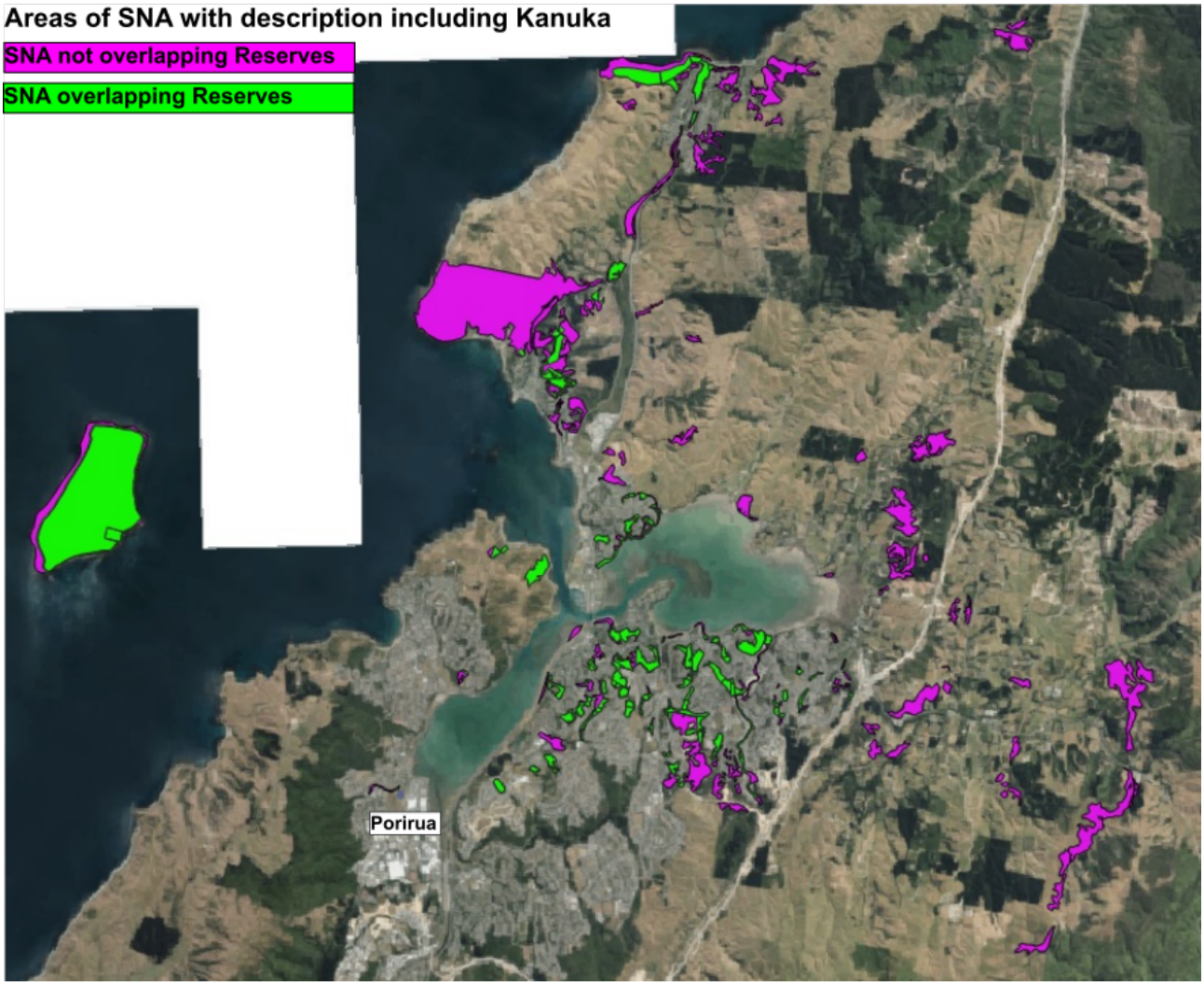
- Download the Council's Graphic Information System shape files for council Reserves and proposed SNA's, available from their website.
- Obtain from Council a copy of the Wildland's database used to identify SNA's (supplied by Torrey McDonell via Louise White on 1/11/2021)
- Using the Wildlands database column BC labelled "Myrtaceae" in header row create a filter selecting all the SNA rows starting with "Kanuka".
- Using the GIS application QGIS import the Reserves and SNA shape files.
- Using the "Kanuka" filter, create a new layer for all the SNA's selected by the "Kanuka" filter, "Kanuka SNAs".
- Intersect the Reserves layer with the "Kanuka SNAs" layer.

I was expecting to have to search out QEII covenanted land and other land covenants as well as protection by council consent notice but have not gone that far as it seemed unnecessary.

Using QGIS to calculate the various areas I got the following:

Total Significant Natural Areas:	3281 hectares	(but only counted 214 versus the S32 222?)
Total Council Reserves:	3219 hectares	
Total Kanuka SNAs (count 87)	966 hectares	
Intersection Reserves|Kanuka SNAs	376 hectares	

Therefore indicating 376/966 = 0.39 or **39% protection** even before counting consent notices and covenants. This is just slightly higher than the average Reserves protection across all SNA area (38%).


Areas of SNA with description including Kanuka
SNA not overlapping Reserves
SNA overlapping Reserves
Porirua

To make it harder for people to remove trees is to discourage them from planting trees in the first place.

If you allow native trees to grow on your property, look out! Porirua council will take your land rights off you.

If the native scrub is starting to get taller than the gorse you are done for.

If you allow a native understory to develop in your production forest then harvesting will become uneconomic.

If your bit of bush is remotely attached to a wetland over the hill then it will be regarded as a valuable wetland.

If a neighbourhood cat has caught a skink and it has been reported then your native trees will need ecologists and arborists to manage them but no one will stop the cats eating the skinks.

If a bird could fly over your property from one bit of urban bush to another then you own a valuable native species corridor that must be protected from you exercising your property rights even if you have no native trees at all.

If common invasive scrub is pressing into your farm and you don’t obliterate it regularly enough it will trigger the taking of your entire right to farm that area.

This is Porirua Council’s way of having particular regard for the Ethic of Stewardship.