

**IN THE ENVIRONMENT COURT
AT WELLINGTON
TE KŌTI TAIAO O AOTEAROA**

ENV-2024-WLG-

IN THE MATTER

of an appeal under section 14 of Schedule 1 of the
Resource Management Act 1991 against a decision
of the Upper Hutt City Council regarded Variation 1
to Proposed Plan Change 49 – Silverstream Spur

BETWEEN

GUILDFORD TIMBER COMPANY LIMITED

Appellant

AND

UPPER HUTT CITY COUNCIL

Respondent

**NOTICE OF APPEAL ON BEHALF OF GUILDFORD TIMBER COMPANY LIMITED
ON VARIATION 1 TO PROPOSED PLAN CHANGE 49**

18 November 2024

Counsel:

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To The Registrar

 Environment Court

 Wellington

NOTICE OF APPEAL

1. The appellant, Guildford Timber Company Limited, appeals a decision by Upper Hutt City Council (**Council**) to approve Variation 1 to Proposed Plan Change 49 as recommended in the Report by the Independent Hearing Panel. Proposed Plan Change 49 Open Spaces reviews the Open Space Chapter of the Operative Upper Hutt City District Plan (2004) as part of the rolling review of the District Plan, and introduces a Natural Open Space Zone over a number of sites in the City. Variation 1 – Silverstream Spur to Proposed Plan Change 49 rezones the Silverstream Spur from a mix of Rural Hill Zone and Residential Conservation Zone to Natural Open Space.
2. The Guildford Timber Company Limited filed a submission on Variation 1 and received notice of the decision on 31 October 2024.
3. The decision was made by an independent hearing panel appointed and acting under delegated authority of the Council, and later adopted by Council.
4. Guildford Timber Company Limited is not a trade competitor for the purposes of section 308D of the Resource Management Act 1991.
5. The decision that Guildford Timber Company Limited is appealing is the whole of the decision to approve Variation 1 to Proposed Plan Change 49.
6. The reasons for the appeal are:
 - (a) The decision makes a number of fundamental amendments to the policies and rules of Variation 1 to Proposed Plan Change 49 that means the notified intent of the Variation to enable infrastructure including a road corridor and associated infrastructure through the Silverstream Spur to access land intended for future residential development is no longer achieved;
 - (b) These amendments include deleting key enabling provisions Policy NOSZ-P6, Rule NOSZ-R15.1 and Standard NOSZ-S4 included in Variation 1 specific to the Silverstream Spur, and amending Policy

NOSZ-P7 to require protection and avoidance of effects on the Significant Natural Area (SNA) area to be shown on the Planning Map;

- (c) The removal of a bespoke provisions also mean rules in the wider District Plan are now relevant, and in particular Rule TP-R5 which classifies a new road in the Open Space Zone as non-complying activity, and has also removed any policy support for an infrastructure corridor in this area.
- (d) The decision is wrong when it determines Rule NOSZ-R15 would result in regulatory duplication, conflict and uncertainty for plan users and deletes this key enabling provision.
- (e) The overall result would mean the consent category for a new road and infrastructure through the Silverstream Spur would default to non-complying if a 'bundling' approach is taken, whereas the notified Variation 1 to Proposed Plan Change 49 required a controlled activity resource consent for these activities;
- (f) The decision identifies a SNA on the Silverstream Spur that wrongly includes an area that does not meet the criteria for identifying the ecological values of a SNA when implementing the National Policy Statement - Indigenous Biodiversity (NPS-IB) and relevant Policies of the Greater Wellington Regional Council Regional Policy Statement.
- (g) The wrongful inclusion of this area in the SNA means a new road and associated infrastructure could not pass through the Silverstream Spur without going through the SNA which leads to a more restrictive consents being required for the removal of indigenous vegetation which is not warranted; and
- (h) The decision adopted an overly restrictive interpretation of the Futures Development Strategy (FDS) in declining to provide for bespoke plan provisions to facilitate a future road/infrastructure corridor to service the development of the Southern Growth Area and did not give effect to Policy 8 of the NPS-UD.
- (i) Variation 1 to Proposed Plan Change 49 as amended by the decision is contrary to the intent of the NPS-UD and NPS-IB (including recent amendments) and will not promote the sustainable management of natural and physical resources and therefore will not achieve the purpose of the RMA, and is contrary to Part 2 of the RMA.

7. Guildford Timber Company Limited seeks the following relief:

- (a) The Panel's decision be reversed and Variation 1 to Proposed Plan Change 49 is adopted as notified, with the amendments requested by Guildford Timber Company Limited through its submission and evidence to the hearing. The plan be amended to address Guildford Timber Company's concerns. Specific wording changes sought by the Guildford Timber Company Limited are included in **Attachment A** to this Notice or alternative relief to this effect;
- (b) Such consequential or related relief be granted as may be necessary to give effect to Guildford Timber Company Limited's concerns;
- (c) Costs be granted; and
- (d) Even further or additional relief that the Environment Court deems just.

8. The following documents are attached to this notice:

- (a) A copy of Guildford Timber Companies submission and further submission on PC 49-Variation 1.
- (b) A list of names and addresses of persons to be served with a copy of this notice;
- (c) A copy of the decision.

Dated: 18 November 2024



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Documents for service on the appellant may be left at that address for service or may be emailed to counsel at andrew@beatson.co.nz.

Attachment A – Amendments sought by the Appellant to the Final Panel Recommended Variation 1 Provisions:

The Appellant seeks that the text of the Final Panel Recommended Variation 1 Provisions is amended as follows.

The provisions in plain text are the Final Panel Recommended Variation 1 Provisions. GTC requested changes are provided in **bold** (additions) and ~~striketrough~~ (deletions).

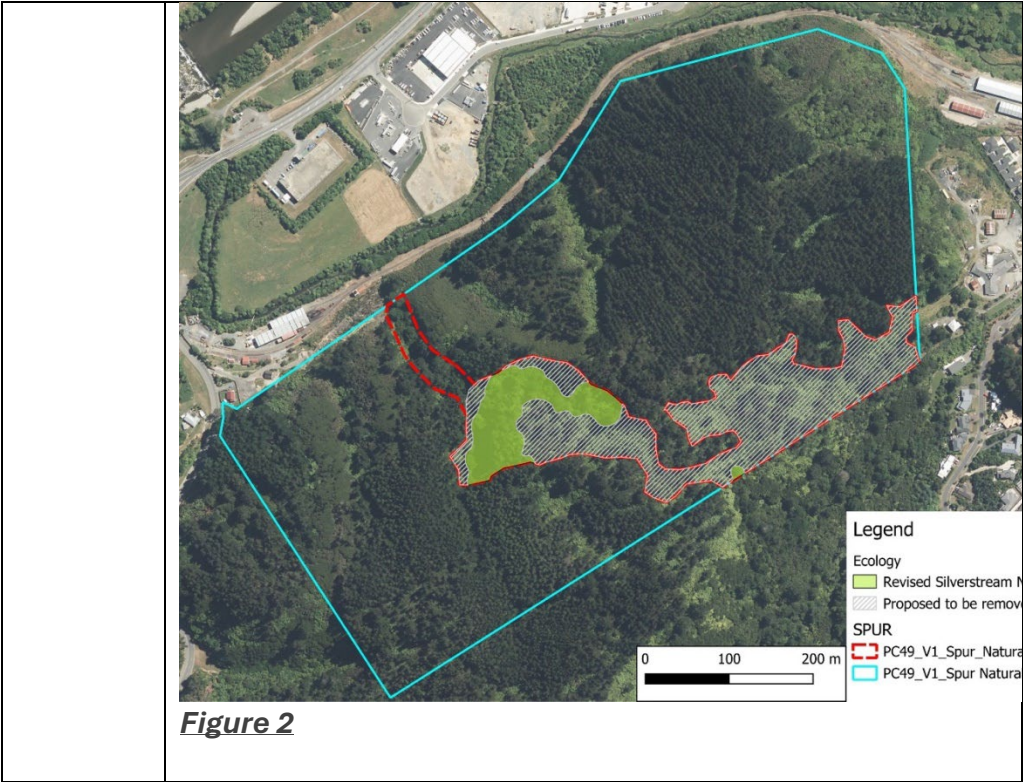
Descripti on	Provisions
<u>New Zoning</u>	<u>Rezone Silverstream Spur as Natural Open Space Zone</u>
New Definitio n	Biodiversity Offset means the same as in the National Policy Statement for Indigenous Biodiversity in box below: biodiversity offset means a measurable conservation outcome that meets the requirements in Appendix 3 [of the NPS-IB] and results from actions that are intended to: (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 to that lost.
<u>Add an Earthwor k s Appendi x 1</u>	<u>Accidental Discovery Protocol for earthworks on the Silverstream Spur</u> <u>1. In the event of an “accidental discovery” of archaeological matter including human remains the following steps shall be taken:</u> <u>a) All work within the vicinity of the site will cease immediately.</u> <u>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).</u> <u>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.</u> <u>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</u>

	<u>statutory agencies or Mana Whenua authorities, if this has not already occurred.</u> e) <u>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> f) <u>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> g) <u>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> h) <u>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.</u> i) <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> j) <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>
New Policies	<u>NOSZ-P6: Silverstream Spur Infrastructure</u> <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> 1. <u>Provide for a range of passive recreation and future development opportunities where the</u>

	<u>effects of such development are managed in accordance with NOSZ-P7 and;</u> 2. <u>Support the development of the Southern Growth Area and restore and enhance the biodiversity of the Silverstream Spur.</u>
	NOSZ-P7: Silverstream Spur Significant Natural Area Protect the biodiversity values within the identified Silverstream Spur Significant Natural Area identified on the District Plan maps by requiring adverse effects from development to <u>be</u>: (a) Avoid the following adverse effects on indigenous biodiversity: (i) Loss of ecosystem representation and extent; (ii) Disruption to sequences, mosaics, or ecosystem function; (iii) Fragmentation of SNAs or the loss of buffers or connections within an SNA; (iv) A reduction in the function of the SNA as a buffer or connection to other important habitats or ecosystems; (v) A reduction in the population size or occupancy of Threatened or At Risk (declining) species that use an SNA for any part of their life cycle. Where adverse effects on the SNA of a new subdivision, use, or development that are not referred to above, or that occur as a result of the exceptions in clause 3.11 of the National Policy Statement for Indigenous Biodiversity 2023, the adverse effects must be: (a) avoided where practicable; then <u>and</u> (b) where adverse effects cannot be <u>demonstrably</u> avoided, they are minimised <u>mitigated</u> where practicable; then <u>and</u> (c) where adverse effects cannot be <u>demonstrably mitigated</u> minimised, they are remedied where practicable; then <u>and</u> (d) where more than minor residual adverse effects cannot be <u>demonstrably</u> avoided, minimised, or remedied, biodiversity offsetting is provided where possible; then <u>and</u> (e) where biodiversity offsetting of more than minor residual adverse effects is not possible, biodiversity compensation is provided; then (f) if biodiversity compensation offsetting is not appropriate, the development itself is avoided.

New Rule	<u>NOSZ-R15: Road and associated network utility infrastructure, including storage tanks or reservoirs on the Silverstream Spur Natural Area (Pt Sec 1 SO 34755, Parcel ID: 3875189)</u> <u>1. Activity Status: CON</u> <u>Where:</u> a) <u>Compliance is achieved with:</u> i. <u>NOSZ-S4.</u> <u>Council may impose conditions over the following matters:</u> b) <u>Landscaping.</u> c) <u>Road alignment location and design.</u> d) <u>Provision of and effects on network utilities or services.</u> e) <u>Earthworks and accidental discovery.</u> f) <u>Effects on biodiversity in the identified Silverstream Spur Natural Area.</u>
	<u>2. Activity Status: RDIS</u> <u>Where:</u> a) <u>compliance is not achieved with NOSZ-S4 matters of restriction will be limited to:</u> i. <u>landscaping</u> ii. <u>road alignment location and design</u> iii. <u>provision of and effects on network utilities or services</u>
New Standards	<u>NOSZ – S4</u> <u>1. Carriageway traffic lanes width shall not exceed 3.5m per lane.</u> <u>2. Footpath or shared path shall be provided on one side of the road only.</u> <u>3. Road and footpath gradient shall not exceed 1:8.</u> <u>4. Parallel parking may be provided along one side of the road.</u> <u>5. Transport corridor and earthworks are not located within the Silverstream Spur Natural Area.</u>
New Rule	<u>NOSZ-R22: Removal of indigenous vegetation within on the Silverstream Spur Significant Natural Area (Pt Sec 1 SO</u>

	34755, Parcel ID: 3875189) as identified on the District Plan maps 1. Activity Status: RDIS
Amend District Plan Maps	Amend the District Plan maps as follows: 1. Add the “Silverstream Spur Significant Natural Area” as depicted below (in the image to the right) Replace the mapping of the Silverstream Spur Natural Area as depicted in the Final Panel Recommended Variation 1 Provisions (Figure 1) with the extent of Revised Silverstream Natural Area as shown on Figure 2 below; and 2. Rezone the Silverstream Spur (Pt Sec 1 SO 34755, Parcel ID: 3875189) from General Rural Zone and General Residential Zone (as shown on Figure 1, in the image to the left), to Natural Open Space Zone as shown on Figure 1 below (as shown in the image to the right), as amended by the boundary of the Revised Silverstream Natural Area as shown on Figure 2: Figure 1



Advice to recipients of copy of notice of appeal

How to become a party to proceedings

1. If you wish to become a party to the appeal, you must,—
 - (a) within 15 working days after the period for lodging a notice of appeal ends, lodge a notice of your wish to be a party to the proceedings (in form 33) with the Environment Court and serve copies of your notice on the relevant local authority and the appellant; and
 - (b) within 20 working days after the period for lodging a notice of appeal ends, serve copies of your notice on all other parties.
2. You may apply to the Environment Court under section 281 of the Resource Management Act 1991 for a waiver of the above timing requirements (see form 38).
3. Your right to be a party to the proceedings in the court may be limited by the trade competition provisions in section 274(1) and Part 11A of the Resource Management Act 1991.

Advice

4. If you have any questions about this notice, contact the Environment Court in Auckland, Wellington, or Christchurch.

List of persons to be served

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<i>Local authority</i>	
Upper Hutt City Council	Civic Centre 838/842 Fergusson Drive Upper Hutt Central Upper Hutt 5018 mailto:UHCC.Planning@uhcc.govt.nz
<i>Submitters</i>	
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