

IN THE MATTER

of the Resource Management Act 1991 (**the Act**)

AND

IN THE MATTER

of the proposed Waikato District Plan (Stage 1) – Hearing 21A – Significant Natural Areas

STATEMENT OF EVIDENCE OF JOHN ANDREW RIDDELL FOR THE DIRECTOR-GENERAL OF CONSERVATION

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INTRODUCTION

1. My name is John Andrew Riddell.
2. I hold the qualification of Bachelor of Resource and Environmental Planning with First Class Honours. I am a member of the New Zealand Planning Institute.

Experience

3. I am currently self-employed, operating under the company name CEP Services Matauwhi Limited.
4. I have been practising as a resource management planner on a part-time basis since 1989 and a full-time basis since 1993. Until November 1998 I was self-employed, although I did work for Nugent Consultants Limited on a part time basis from 1993 until 1996. Between November 1998 and June 2013, I was employed by the Department of Conservation (“the Department”).
5. A significant portion of my resource management work has involved assessing draft and proposed regional policy statements and regional and district plans, preparing submissions and giving evidence on policy statement and plan content, participating in mediation on appeals over proposed policy statements and plans, and giving evidence to the Environment Court on provisions of policy statements and plans.
6. In the last five years I have given advice and/or evidence and/or participated in mediation and expert conferencing on the following proposed policy statements and plans:
 - Auckland Unitary Plan;
 - proposed Thames-Coromandel District Plan;
 - Bay of Plenty Coastal Environment Plan;
 - draft Gisborne Water and Soil Plan;
 - Northland Regional Policy Statement;
 - Whangarei District Plan Changes;
 - draft Far North District Plan; and

- Regional Coastal Plan – Kermadec and Subantarctic Islands.
7. A comprehensive list of the policy statements and plans I have been involved in (comments, submissions, evidence, mediation, and/or appeals) since 1998 is given in the footnote.¹
 8. In addition to this policy statement and plan work I have experience in preparing, assessing, submitting and giving evidence on resource consents.² This includes evidence to the Environment Court on applications for coastal subdivision, protection for long-tailed bats within a large urban subdivision in Hamilton, tidal power generation, the taking of groundwater, and mangrove removal. I have processed resource consent applications for Far North District Council.

Involvement in preparation of the Director-General's submission and appeal on the proposed Plan

9. I have been asked by the Director-General of Conservation (**the Director-General**) to provide evidence in regard to the Director-General's submissions and further submissions on the proposed Waikato District Plan (**the proposed Plan**).
10. I was engaged on this matter in early September 2019. I was not involved in the preparation of the Director-General's submission and further submission on the proposed Plan.

Code of Conduct

11. I have read and agree to comply with the Code of Conduct for Expert Witnesses produced by the Environment Court (2014). My qualifications and experience as an expert are set out above. Other than those matters identified within my evidence as

¹I have prepared reports on financial contributions that were part of the preparation of the Far North District Plan and the Waitakere City District Plan. I have provided evidence on, and/or provided planning advice for appeal negotiations and mediation on: the Auckland City District Plan - Isthmus section, Far North District Plan, Bay of Islands District Scheme (which included a coastal plan component), Whangarei District Plan (including several plan changes), Kaipara District Plan, Kaikoura District Plan, Northland Regional Policy Statements (there have been two), Regional Water and Soil Plan for Northland, Regional Coastal Plan for Northland and plan changes to that plan, the draft Gisborne Water and Soil Plan, the Auckland Unitary Plan, the proposed Thames-Coromandel District Plan, the Regional Coastal Plan – Kermadec and Subantarctic Islands, and the Bay of Plenty Coastal Environment Plan. I was one of co-authors of the *Sustainable Development Plan for Kororipo-Kerikeri Basin*, October 2005. This was a management plan prepared under the Reserves Act for the combined reserve land at Kororipo-Kerikeri Basin administered by the Department of Conservation and the Far North District Council.

²Applications that I have prepared include applications for a mangrove boardwalk, discharges from fish processing facilities, indigenous vegetation clearance, earthworks, boat ramp, jetties, boat slip, buildings in the coastal marine area, houses in flood hazard areas, aerial pest control (1080 and brodifacoum), medical centre, restaurant, huts on public conservation land, and several houses and other structures.

being from other experts, I confirm that the issues addressed in this brief of evidence are within my area of expertise. I have not omitted to consider material facts known to me that might alter or detract from the opinions expressed.

APPROACH TAKEN IN EVIDENCE

12. This evidence covers the following matters under consideration in Hearing 21A – Significant Natural Areas:

- identifying significant natural areas,
- kauri dieback disease,
- long-tailed bat protection,
- biodiversity offsetting,

followed by an assessment of the rest of the submissions and further submissions by the Director-General under the section headings 'Objectives and Policies' and 'Rules'.

13. Before addressing the submission points identified above I discuss the over-arching policy guidance that applies.

14. I have read the 21A Hearing Report required by section 42A of the Act on these matters.³

15. In this statement, I use the numbering from the proposed District Plan unless noted otherwise.

16. Where I show amended proposed Plan provisions I use **red strike-throughs and underlining** to show changes recommended in the 21A Hearing Report, and **green strike-throughs and underlining** to show changes that I recommend.

17. I will provide a collated document showing all the amendments and further provisions I recommend in this evidence when I provide the summary of this evidence before the hearing. This will allow me to make any amendments to my recommendations that may arise after I have read the rebuttal evidence.

³In this evidence I refer to that report as the 21A Hearing Report.

RELEVANT POLICY GUIDANCE

18. In this section I briefly summarise discuss the directly relevant planning guidance from part 2 of the Act, national policy statements,⁴ and the Waikato Regional Policy Statement (**Regional Policy Statement**). I briefly discuss the Waikato-Tainui Raupatu Claims (Waikato River) Settlement Act, Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, Nga Wai o Maniapoto (Waipa River) Act 2012, and the Hauraki Gulf Marine Park Act 2000. I also comment on the district plan requirements with respect to national environmental standards.
19. First I discuss the relevant functions of a district council with respect to indigenous biodiversity.

Functions of district council

20. Section 31 of the Act sets out the functions of territorial authorities. With respect to indigenous biodiversity, I consider the following functions are (particularly) relevant:

31(1) Every territorial authority shall have the following functions for the purpose of giving effect to this Act in its district:

- (a) the establishment, implementation, and review of objectives, policies, and methods to achieve integrated management of the effects of the use, development, or protection of land and associated natural and physical resources of the district: ...
- (b) the control of any actual or potential effects of the use, development, or protection of land, including for the purpose of— ...
 - (ia) the prevention or mitigation of any adverse effects of the development, subdivision, or use of contaminated land:
 - (iii) the maintenance of indigenous biological diversity: ...

21. The relevance of the function relating to contaminated land is discussed further in section on kauri dieback (paragraphs 123 to 189).

⁴Three national policy statements are discussed; New Zealand Coastal Policy Statement 2010 (**Coastal Policy Statement**), National Policy Statement for Freshwater Management 2020 (**Freshwater Policy Statement**), and the National Policy Statement on Electricity Transmission (**Electricity Transmission Policy Statement**). There is a draft National Policy Statement on Indigenous Biodiversity. This is not considered further in my evidence because draft national policy statements have no legal standing in terms of the preparation of district plans. Further, there is uncertainty over what will be the actual content of any operative National Policy Statement on Indigenous Biodiversity.

22. Regional council indigenous biodiversity functions cover the control of the use of land for the maintenance and enhancement of ecosystems in water bodies and coastal water⁵ and

s30(1)(ga) the establishment, implementation, and review of objectives, policies and methods for maintaining indigenous biological diversity:

23. The main way that the Waikato Regional Council (**Regional Council**) carries out the function of providing regional direction on maintaining indigenous biodiversity is through objectives, policies and methods in the Regional Policy Statement.

24. “Water body” is defined in the Act as

fresh water or geothermal water in a river, lake, stream, pond, wetland, or aquifer, or any part thereof, that is not located within the coastal marine area

25. In my opinion this potentially causes an overlap with respect to indigenous biodiversity functions between the Regional Council and the District Council because, strictly, the Regional Council's function with respect to the control of the use of land and the maintenance and enhancement of wetland ecosystems is limited to the aquatic component of the wetland.

26. On this point the Regional Policy Statement sets out the following:

Method 4.2.11 Indigenous biodiversity

In carrying out their resource management functions, local authorities shall maintain or enhance indigenous biodiversity. Territorial authorities shall be responsible for the control of the use of land to maintain indigenous biodiversity, excluding land in the coastal marine area and the beds of lakes and rivers, which shall be the responsibility of the Waikato Regional Council.

27. There remains, in my opinion, a level of ambiguity over the management of wetlands for indigenous biodiversity purposes.⁶

⁵Section 30(1)(c)(iia) of the Act.

⁶Policies and methods in section 8 of the Regional Policy Statement are clear that the management of wetlands for water quantity and quality purposes is a Waikato Regional Council function. There is considerable overlap of responsibility for wetland biodiversity in the indigenous biodiversity provisions in section 11 of the Regional Policy Statement. The Freshwater Policy Statement sets out actions for regional councils only with respect to natural inland wetlands (in policies 3.22 and 3.23).

28. Note also that this method adds “enhance indigenous biodiversity” to the “maintenance of indigenous biodiversity” from section 31 of the Act.

Part 2 of the Act

29. Part 2 of the Act sets out the purpose of the Act,⁷ gives a definition for 'sustainable management', and sets out some other matters to be recognised and provided for or to which particular regard must be had or which must be taken into account.

30. In my opinion, the following, summarised from Part 2 of the Act, are particularly applicable to the sustainable management of indigenous biodiversity:

- i. 'Sustainable management' is managing use, development and protection to contemporaneously achieve four objectives which include
 - safeguarding the life-supporting capacity of ecosystems, and
 - sustaining the potential to meet the reasonably foreseeable needs of future generations – one reasonably foreseeable need being maintaining and enhancing indigenous biodiversity;⁸
- ii. the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna is a matter of national importance that must be recognised and provided for;
 - the 'protection' directive in this provision is to be contrasted with the qualified protection from inappropriate subdivision, use and development applying to several other matters of national importance;
- iii. having particular regard to the intrinsic values of ecosystems
 - intrinsic values being defined in the Act as:

intrinsic values, in relation to ecosystems, means those aspects of ecosystems and their constituent parts which have value in their own right, including—

(a) their biological and genetic diversity; and

⁷The purpose being to promote the sustainable management of natural and physical resources, section 5(1) of the Act.

⁸Section 5(2) of the Act. The other two objectives relate to providing for well-being, and avoiding, remedying or mitigating adverse effects,

- (b) the essential characteristics that determine an ecosystem’s integrity, form, functioning, and resilience.

- 31. These indigenous biodiversity-related provisions in Part 2 of the Act are, of course, to be considered alongside other provisions of Part 2 that I have not identified here, including the provision for, and protection of, Māori interests set out in sections 6(e), 7(a) and 8 of the Act.
- 32. Notwithstanding that, I consider that Part 2 of the Act does intend that indigenous biodiversity is protected. More detail on the actions to be taken in the proposed Plan to provide that protection is given the following discussion.

National Policy Statements

- 33. National policy statements provide national policy guidance on particular resource management issues. District plans must give effect to national policy statements.⁹
- 34. Three of the five operative national policy statements are discussed here.

Coastal Policy Statement

- 35. The Coastal Policy Statement is a national policy statement that applies within the coastal environment of the Waikato district.
- 36. Policy 11 of the Coastal Policy Statement is specific to indigenous biodiversity.
- 37. This policy sets out two directives with regard to indigenous biodiversity. For the matters listed in part (a) of the policy the proposed Plan must give effect to an “avoid adverse effects of activities” regime.¹⁰
- 38. For the matters listed in part (b) of this policy the proposed Plan must give effect to an “avoid significant adverse effects” regime.
- 39. Policy 11 starts with the words “To protect indigenous biological diversity in the coastal environment”, which I consider means that the avoid adverse effects/avoid significant adverse effects regime applies to adverse effects on indigenous biodiversity.

⁹This is the only operative national policy statement that is, in my opinion, directly relevant to the consideration of the provision for indigenous biodiversity in the proposed Plan. There is a draft national policy statement on indigenous biodiversity. I do not consider that in this evidence because the Act does not provide for the consideration of draft national policy statements when preparing district plans.

¹⁰Most of the matters listed in policy 11(a) are repeated in policy 3.2.5.

40. There may, at times, be a conflict between this indigenous biodiversity avoid adverse effects/avoid significant adverse effects directive and directives in other national policy statements. In such cases there needs to be a consideration on the facts of the specific potential conflict.

Electricity Transmission Policy Statement

41. In my experience this is the national policy statement with which a conflict arises with avoid/avoid significant adverse effects policy direction of the Coastal Policy Statement.
42. Particularly there is a potential conflict with policy 8 of the Electricity Transmission Policy Statement. This policy sets out the intent of seeking to avoid adverse effects in rural environments. Policy 4 requires decision-makers to have regard to the extent to which any adverse effects of new transmission infrastructure or major upgrades of transmission infrastructure can be avoided, remedied or mitigated by the route, site and method selection.
43. The usual way I have seen this conflict addressed in plan policies is to include a policy confirming that, for the national electricity transmission network, it is left to a case by case assessment on the extent to which adverse effects should be avoided.

National Policy Statement for Freshwater Management 2020

44. The National Policy Statement for Freshwater Management (**Freshwater Policy Statement**) came into force on 7 September this year.
45. While most of the Freshwater Policy Statement sets out tasks for regional councils, I consider that it is good resource management practice to, as much as possible and within the limits of the different functions of regional and territorial authorities, to align the objectives, policies and rules of their plans.¹¹
46. It is relevant, therefore, to note the following from the Freshwater Policy Statement:

2.1 Objective

- (1) The objective of this National Policy Statement is to ensure that natural and physical resources are managed in a way that prioritises:
- (a) first, the health and well-being of water bodies and freshwater ecosystems

¹¹Under section 75(3) a district plan cannot be inconsistent with a regional plan, for any matter covered under subsection 1 of the functions of a regional council set out in section 30 of the Act.

- (b) second, the health needs of people (such as drinking water)
- (c) third, the ability of people and communities to provide for their social, economic, and cultural well-being, now and in the future.

2.2 Policies

Policy 1: Freshwater is managed in way that gives effect to Te Mana o te Wai.

Policy 2: Tangata whenua are actively involved in freshwater management (including decision-making processes), and Māori freshwater values are identified and provided for.

Policy 3: Freshwater is managed in an integrated way that considers the effects of the use and development of land on a whole-of-catchment basis, including the effects on receiving environments.

Policy 6: There is no further loss of extent of natural inland wetlands, their values are protected, and their restoration is promoted.¹²

Policy 7: The loss of river extent and values is avoided to the extent practicable.

Policy 9: The habitats of indigenous freshwater species are protected.

47. It is, in part, implemented by the Resource Management (National Environmental Standards for Freshwater) Regulations 2020 (**Freshwater National Environmental Standards**). This is discussed further at paragraphs 88 to 91, below.

Regional Policy Statement

48. The Regional Policy Statement has a specific section on indigenous biodiversity that is directly relevant to the consideration of the indigenous biodiversity in the proposed Plan.

49. The Regional Policy Statement sets out a specific objective with respect to indigenous biodiversity:

Objective 3.19

The full range of ecosystem types, their extent and the indigenous biodiversity that those ecosystems can support exist in a healthy and functional state.

¹²'natural inland wetland' means a natural wetland that is not in the coastal marine area; clause 3.21 of the Freshwater Policy Statement. This policy would apply to all wetlands in the Waikato District, including Whangamarino wetland.

50. Policies and methods specific to indigenous biodiversity are given in three sections of the Regional Policy Statement – a section on maintaining or enhancing indigenous biodiversity, a section on Significant Natural Areas, and a section on safeguarding coastal and marine ecosystems.

51. Policy 11.1 states

Promote positive indigenous biodiversity outcomes to maintain the full range of ecosystem types and maintain or enhance their spatial extent as necessary to achieve healthy ecological functioning of ecosystems, with a particular focus on:

- a) working towards achieving no net loss of indigenous biodiversity at a regional scale;
- b) the continued functioning of ecological processes;
- c) the re-creation and restoration of habitats and connectivity between habitats;
- d) supporting (buffering and/or linking) ecosystems, habitats and areas identified as significant indigenous vegetation and significant habitats of indigenous fauna;
- e) providing ecosystem services;
- f) the health and wellbeing of the Waikato River and its catchment;
- g) contribution to natural character and amenity values;
- h) tāngata whenua relationships with indigenous biodiversity including their holistic view of ecosystems and the environment;
- i) managing the density, range and viability of indigenous flora and fauna; and
- j) the consideration and application of biodiversity offsets.

52. Methods under this policy set out matters that district plans must address. These matters include:

- providing for positive indigenous biodiversity outcomes when managing activities¹³
- creating buffers linkages and corridors to protect and support indigenous biodiversity values¹⁴

¹³Method 11.1.1(a) of Regional Policy Statement.

¹⁴Method 11.1.1(c) of Regional Policy Statement.

- a non-exhaustive list of adverse effects on indigenous biodiversity, including
 - cumulative effects
 - fragmentation and loss of connections and linkages and migratory pathways
 - loss of ecological sequences and reduced ecological integrity
 - changes from increase threat from animal and plant pests
 - loss of buffering
 - loss of habitat supporting or providing a life-cycle function for a threatened or at risk species¹⁵
 - for non-significant indigenous biodiversity, promote biodiversity offsets where adverse residual effects are significant, and setting out considerations with respect to remediation, mitigation or offsetting¹⁶
 - requiring district plans to include permitted activities where there would be minor adverse effects in relation to the maintenance or protection of indigenous biodiversity, and identifying 'minor adverse effects' activities as potentially including
 - maintenance and upgrading of infrastructure
 - land use activities with existing use rights
 - activities undertaken for maintenance or enhancement of indigenous biodiversity
 - collection of material for maintaining traditional Māori cultural practices
 - actions to avoid loss of life or serious damage to property¹⁷
53. Other methods in this section set out the Regional Council's lead role in information gathering,¹⁸ conducting a biodiversity inventory,¹⁹ and in developing local biodiversity strategies.²⁰

¹⁵Method 11.1.2 of Regional Policy Statement.

¹⁶Method 11.1.3 of Regional Policy Statement.

¹⁷Method 11.1.4 of Regional Policy Statement.

¹⁸Method 11.1.5 of Regional Policy Statement.

54. Method 11.1.7 is on threatened species information and states:

Local authorities should liaise with the Department of Conservation and other relevant agencies to ensure location and distribution data for species listed as 'Threatened' or 'At Risk' in the New Zealand Threat Classification System lists are available when preparing and implementing regional or district plans.

55. Policy 11.2 in the Regional Policy Statement is a policy directly addressing matter of national importance 6(c) of the Act:

Significant indigenous vegetation and the significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

56. Whether indigenous vegetation or any habitat is significant or not is determined, according to the Regional Policy Statement, by reference to the significance criteria set out in section 11A of the Regional Policy Statement.

57. To be 'significant' an area needs to meet one or more of the eleven criteria listed in section 11A.²¹

58. All these criteria except two explicitly refer to "indigenous vegetation". One of these two other criteria relates to aquatic habitat. The other of these two criteria could apply to areas of exotic vegetation or exotic habitat:

Criterion 3. It is vegetation or habitat that is currently habitat for indigenous species that are:

- classed as threatened or at risk, or
- endemic to the Waikato region, or
- at the limit of their natural range.

59. Note also that there is no requirement for significant natural areas to be mapped in a district plan for an area to be 'significant' – it just requires one or more of the listed criteria to be met.²²

¹⁹Method 11.1.6 of Regional Policy Statement.

²⁰Method 11.1.11 of Regional Policy Statement.

²¹These eleven criteria are listed under sub-headings of "previously assessed site", "Ecological values" and "Role in protecting ecologically significant area". Appendix 2 in the proposed Plan reproduces these criteria with a few cosmetic changes.

²²See method 11.2.3 of the Regional Policy Statement.

60. The important method with respect to these significant natural areas is, in my opinion, method 11.2.2 as it sets out requirements with respect to avoiding, remedying or mitigating adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna. It is worth quoting in full:

11.2.2 Protect areas of significant indigenous vegetation and significant habitats of indigenous fauna

Regional and district plans shall (excluding activities pursuant to 11.1.4):²³

- a) protect areas of significant indigenous vegetation and significant habitats of indigenous fauna;
- b) require that activities avoid the loss or degradation of areas of significant indigenous vegetation and significant habitats of indigenous fauna in preference to remediation or mitigation;
- c) require that any unavoidable adverse effects on areas of significant indigenous vegetation and significant habitats of indigenous fauna are remedied or mitigated;
- d) where any adverse effects are unable to be avoided, remedied or mitigated in accordance with (b) and (c), more than minor residual adverse effects shall be offset to achieve no net loss; and
- e) ensure that remediation, mitigation or offsetting as a first priority relates to the indigenous biodiversity that has been lost or degraded (whether by on-site or off-site methods). Methods may include the following:
 - i) replace like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - ii) involve the re-creation of habitat;
 - iii) develop or enhance areas of alternative habitat supporting similar ecology/significance; or
 - iv) involve the legal and physical protection of existing habitat;
- f) recognise that remediation, mitigation and offsetting may not be appropriate where the indigenous biodiversity is rare, at risk, threatened or irreplaceable; and
- g) have regard to the functional necessity of activities being located in or near areas of significant indigenous vegetation and significant

²³11.1.4 is the method about providing for permitted activities where there are minor adverse effects on indigenous biodiversity. See the last bullet points on page 14, above.

habitats of indigenous fauna where no reasonably practicable alternative location exists.

61. I consider that this sets out a protection oriented approach to significant natural areas, with a preference for avoiding adverse effects.
62. When this method is read in conjunction with policy 11.2, it is clear that the protection/avoiding adverse effects is to be assessed in terms of the actual and potential effects on the particular characteristics (values and attributes) of a significant natural area.
63. The explanation given in the Regional Policy Statement for method 11.2.2 expands on this

Method 11.2.2 reflects a more directive approach to achieving no net loss for areas of significant indigenous biodiversity than Method 11.1.3. This is consistent with s6(c) of the Resource Management Act which requires protection of such biodiversity. The Method seeks avoidance of adverse effects as the most effective means of protecting areas of significant indigenous vegetation and significant habitat of indigenous fauna. It recognises that some loss of or damage to those areas may be unavoidable and in those cases remediation and mitigation is required. Where adverse effects remain after avoidance, remediation and mitigation then more than minor adverse effects are required to be offset. Any loss can be documented and tracked to assist with monitoring the state of the resource.

When applying Method 11.2.2, the expectation is that proposals should reasonably demonstrate that no net loss has been achieved using methodology that is appropriate and commensurate to the scale and intensity of the adverse effects. The application of biodiversity offsetting will be determined on a case by case basis through the decision-making processes.

Method 11.2.2(g) requires that plans shall have regard to the necessity for certain activities to locate in areas of significant indigenous biodiversity where the presence of another resource leads to a functional need for the activity to locate there. Clause (g) does not provide activities with an exemption from the other clauses within Method 11.2.2, it is another matter to be considered through the decision-making process as appropriate.²⁴

²⁴Page 11-7 of Regional Policy Statement.

64. Dr Corkery discusses when no net loss should apply in her evidence.²⁵
65. Policy 11.4, on safeguarding coastal and marine ecosystems, is a repeat of policy 11 of the Coastal Policy Statement.
66. In summary, with respect to indigenous biodiversity, the Regional Policy Statement sets out overall policy guidance that
- generally promotes positive biodiversity outcomes,
 - seeks to maintain and enhance indigenous biodiversity,
 - sets out 'significance' criteria, and
 - protects significant natural areas by ensuring that the values and attributes that contribute to that significance are not adversely effected to the extent that the significance of the indigenous biodiversity is reduced.
67. This approach is consistent with higher order guidance.
- Waikato -Tainui Raupatu (Waikato River) Settlement Act 2010, Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010, Nga Wai o Maniapoto (Waipa River) Act 2012*
68. The restoration and protection of the health and wellbeing of the Waikato River is an overarching purpose of the Waikato-Tainui Raupatu (Waikato River) Settlement Act (**Waikato River Act**) and the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010.²⁶
69. The overarching purpose of Nga Wai o Maniapoto (Waipa River) Act is to restore and maintain the quality and integrity if the waters that flow into and form aprt of the Waipa River for present and future generations and the care and potential of the mana tuku iho o Waiwaia.²⁷
70. All three Acts include, in a schedule to each Act, a vision and strategy (Te Ture Whaimana o Te Awa o Waikato) which applies to the Waikato River and activities within its catchment.

²⁵ Paragraph 5.3 of her evidence.

²⁶Section 3 of Waikato River Act and of the Ngati Tuwharetoa, Raukawa, and Te Arawa River Iwi Waikato River Act 2010

²⁷Section 3 of that Act.

71. This vision and strategy is part of the Regional Policy Statement.²⁸ It prevails over any inconsistent provision in a national policy statement.²⁹ A rule in a district plan for the purpose of giving effect to the vision and strategy prevails over a national environmental standard.³⁰ And district plans must give effect to the vision and strategy.³¹ Those administering a district plan must have particular regard to the vision and strategy with respect to activities within the Waikato River or its catchment.³²
72. The vision and strategy have been incorporated in the Regional Policy Statement, and it can be assumed that the Regional Policy Statement's indigenous biodiversity provisions are consistent with these Acts.

Hauraki Gulf Marine Park Act 2000

73. The north-east of Waikato District is within the catchment of the Hauraki Gulf. The Hauraki Gulf Marine Park Act (**Hauraki Gulf Act**) applies to this area.
74. Section 7 of the Hauraki Gulf Act declares:
- 7(1) The interrelationship between the Hauraki Gulf, its islands, and catchments and the ability of that interrelationship to sustain the life-supporting capacity of the environment of the Hauraki Gulf and its islands are matters of national significance.³³
75. and then sets out, in section 8 of the Hauraki Gulf Act, six objectives to recognise that national significance:

8 Management of Hauraki Gulf

To recognise the national significance of the Hauraki Gulf, its islands, and catchments, the objectives of the management of the Hauraki Gulf, its islands, and catchments are—

- (a) the protection and, where appropriate, the enhancement of the life-supporting capacity of the environment of the Hauraki Gulf, its islands, and catchments:
- (b) the protection and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments:

²⁸The vision and strategy is set out in section 2.5 of the Regional Policy Statement.

²⁹See, for example, section 12(1) of the Waikato River Act.

³⁰See, for example, section 12(4) of Waikato River Act.

³¹See, for example, section 13(4) of Waikato River Act.

³²See, for example, section 17 of Waikato River Act.

³³Sub-section (2) expands on what 'life-supporting capacity' includes.

- (c) the protection and, where appropriate, the enhancement of those natural, historic, and physical resources (including kaimoana) of the Hauraki Gulf, its islands, and catchments with which tangata whenua have an historic, traditional, cultural, and spiritual relationship:
 - (d) the protection of the cultural and historic associations of people and communities in and around the Hauraki Gulf with its natural, historic, and physical resources:
 - (e) the maintenance and, where appropriate, the enhancement of the contribution of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments to the social and economic well-being of the people and communities of the Hauraki Gulf and New Zealand:
 - (f) the maintenance and, where appropriate, the enhancement of the natural, historic, and physical resources of the Hauraki Gulf, its islands, and catchments, which contribute to the recreation and enjoyment of the Hauraki Gulf for the people and communities of the Hauraki Gulf and New Zealand.
76. Section 9(3) of the Hauraki Gulf Act instructs territorial authorities to ensure that any part of its district plan that applies to, relating it to Waikato District, the catchment of the Hauraki Gulf “does not conflict with sections 7 and 8” of the Hauraki Gulf Act.
77. In my opinion, so long as the proposed Plan gives effect to the indigenous biodiversity provisions of the Coastal Policy Statement³⁴ and the Regional Policy Statement, it will not conflict with the indigenous biodiversity considerations required under the Hauraki Gulf Act.

Overall summary of indigenous biodiversity policy guidance

78. In summary, the higher order indigenous biodiversity policy guidance that must be recognised and provided for or given effect, as the case may be, is:
- the protection of significant natural areas;
 - avoiding adverse effects on the indigenous biodiversity listed in policy 11(a) of the Coastal Policy Statement;
 - avoiding significant adverse effects on indigenous biodiversity listed in policy 11(b) of the Coastal Policy Statement; and

³⁴Noting that the Hauraki Gulf Act declares that sections 7 and 8 are to be part of the Coastal Policy Statement.

- outside the coastal environment, following a general preference for avoiding adverse effects on indigenous biodiversity, and for maintaining and enhancing that biodiversity.

NATIONAL ENVIRONMENTAL STANDARDS

79. There are eight national environmental standards setting out regulations for specific activities that apply across the country.
80. Two of these national environmental standards – one on plantation forestry and one on freshwater – are relevant to the indigenous biodiversity provisions of the proposed Plan.
81. The detail of these regulations is discussed as necessary in the rest of this evidence. In this section I briefly set out the limitations on rules in district plans where there are national environmental standard regulations also applying.
82. National environmental standards are regulations.³⁵
83. Rules in plans cannot be more lenient or more stringent than a national environmental standard unless this is explicitly provided for in the particular national environmental standard.³⁶
84. Section 44A of the Act sets out how local authorities are to recognise national environmental standards.
85. Section 44A(2) sets out when a rule conflicts with an existing provision of a proposed plan:

44A(2) Subsections (3) to (5) apply if a local authority's plan or proposed plan contains a rule that conflicts with a provision in a national environmental standard. A rule conflicts with a provision if—

- (a) both of the following apply:
- (i) the rule is more stringent than the provision in that it prohibits or restricts an activity that the provision permits or authorises; and
 - (ii) the standard does not expressly say that a rule may be more stringent than it; or

³⁵Section 43 of the Act.

³⁶Section 43(B), clauses (1) and (3) of the Act.

- (b) the rule in the plan is more lenient than a provision in the standard and the standard does not expressly specify that a rule may be more lenient than the provision in the standard.
86. It requires a local authority to amend its plan or proposed plan where there is a duplication or conflict to remove that duplication or conflict.³⁷
87. This is consistent with the requirement under section 74 of the Act that a territorial authority must prepare its district plan in accordance with any regulations.³⁸
88. Both the National Environmental Standards for Plantation Forestry (**Plantation Forestry NES**) and the Freshwater National Environmental Standards allow rules in district plans to be more stringent.
89. Rules may be more stringent than the Plantation Forestry NES where
- the rule gives effect to an objective in the National Policy Statement on Freshwater Management;
 - the rule gives effect to any of policies 11, 13, 15 and 22 of the Coastal Policy Statement;
 - the rule recognises and provides for the protection of outstanding natural features from inappropriate subdivision use and development;
 - the rule recognises and provides for the protection of significant natural areas;
 - the rule manages activities in certain areas with geological features, including geothermal areas and karst geology.³⁹
90. There is no provision for more lenient rules the regulations in the Plantation Forestry NES.
91. On freshwater, notwithstanding the statement in regulation 5 of the Freshwater National Environmental Standards that the regulations do not deal with functions of territorial authorities, regulation 6 is (emphasis added):

6 Relationship between regulations and plan rules and resource consents

³⁷Clauses (3), (4) and (5) of section 44A of the Act.

³⁸Section 74(1)(f) of the Act.

³⁹Regulation 6 in Plantation Forestry NES.

- (1) A **district rule**, regional rule, or resource consent may be more stringent than these regulations.
- (2) A **district rule**, regional rule, or resource consent may be more lenient than any of regulations 70 to 74 (culverts, weirs, and passive flap gates) if the rule is made, or the resource consent is granted, for the purpose of preventing the passage of fish in order to protect particular fish species, their life stages, or their habitats.

IDENTIFYING SIGNIFICANT NATURAL AREAS

Submission 585.35 by Director-General of Conservation, paragraphs 719 and 720 in part 3 of the 21A Hearing Report

Further submission FS1293.59 by Director-General of Conservation in support of submission 780.49 by the Whaingaroa Environmental Defence Society, paragraph 727 in part 3 of the 21A Hearing Report

Further submission FS1293.61 by Director-General of Conservation opposing submission 835.1 by KiwiRail Holdings Limited, paragraph 729 in part 3 of the 21A Hearing Report

Further submission FS1293.48 by Director-General of Conservation opposing submission 742.185 by New Zealand Transport Agency, paragraphs 730 and 731 in part 3 of the Hearing 21A report

Further submission FS1293.145 by Director-General of Conservation opposing submission 855.2 by Peter Buckley, paragraph 725 in part 3 of the 21A Hearing Report

Various further submissions by the Director-General of Conservation opposing submissions seeking removal or amendment of Significant Natural Area mapping on specific properties, submissions listed in Schedule 1 of the Director-General's further submissions

Further submission FS1293.54 by the Director-General of Conservation in support of submission 746.22 by The Surveying Company, paragraphs 685 to 693 on part 2 of the 21A Hearing Report

Further submission FS1293.13 by Director-General of Conservation in support of submission 81.28 by Waikato Regional Council

92. The submission by the Director-General seeks that the proposed Plan be amended to recognise that unmapped areas within the Waikato District that meet the criteria for 'significance' also need to be managed, and seeks that the plan be amended to achieve this.
93. The submissions supported by the Director-General seeks to add further mapped Significant Natural Area sites. The Director-General supports this occurring where the 'significance' criteria are met.
94. The submissions opposed by the Director-General are seeking to reduce or remove mapped Significant Natural Areas, seeking to ensure that the extent of mapped

Significant Natural Areas is based on the factual application of the 'significance' criteria in Appendix 2 of the proposed Plan.⁴⁰

95. Reasons given in the Director-General's further submission include

Mapping of Significant Natural Areas is based on criteria in Section 11 of the WRPS. Removal of these Significant Natural Areas would not provide an adequate level of protection for areas with significant value for indigenous biodiversity.

The Director-General does not object to removal or amendment to significant (sic) Natural Areas where there is a mapping error. It is also noted that the identification of Significant Natural Areas was a desktop exercise and accuracy would be increased by ground truthing.⁴¹

96. In section 4 of the 21A Hearing Report⁴² there is discussion on the overall approach to Significant Natural Areas. The tenor of the discussion is that there are inaccuracies and gaps with the current Significant Natural Area maps:

57. In discussions with Mr Turner and Ms Bridget Parham (Council's legal counsel), it became obvious that there were significant risks in relying on the mapping of a SNA as contained in the notified version of the Proposed Plan. I am aware of many instances of an area being identified as a SNA which clearly does not meet the Appendix 2 criteria to be classed as a SNA, yet the rules relating to a SNA will apply to that area by virtue of it being a mapped SNA. This has the consequence of severely limiting any earthworks in that mapped area, the construction of any building and, perversely, restricting removal of vegetation even though it may be a noxious species such as privet.

58. There is also a high risk that the maps do not cover those areas which do legitimately qualify as a SNA. As the application of the SNA rules are limited to only the mapped areas in the planning maps, there is a high risk of loss of indigenous vegetation and habitat in those unidentified areas. I am aware that even if the rule was amended to apply to mapped areas or any area meeting the criteria in Appendix 2, this does not overcome the incorrect mapping.

⁴⁰The criteria in Appendix 2 are identical to the criteria in table 11-1 in section 11A of the Regional Policy Statement, except for an extra introductory paragraph in the proposed Plan appendix, and the deletion of headings included in the Regional Policy Statement table 11-1. [There is a stray heading "Role in protecting ecologically-significant area" at the end of criterion 10 in Appendix A of the proposed Plan. This is likely included in error.]

⁴¹From Reasons for further submission opposing the deletion of Significant Natural Areas from properties, with the individual submitters seeking such a result being detailed in Schedule 1 of the Further Submission.

⁴²Paragraphs 48 to 69, Part 1 of the 21A Hearing Report.

The new recommended approach to Significant Natural Areas

97. Several options are discussed for correcting these two issues with the Significant Natural Area mapping. The recommended approach is:

66. Having considered all this information and the submissions on the overall approach, I recommend pursuing Option 5 as suggested by Waikato District Council. This option has several parts to it:

- a. Retain the mapped SNA sites in the Planning Maps only where Council is certain of the extent and quality of the indigenous vegetation as a result of ground truthing;
- b. Delete all other SNA sites from the Planning Maps that have not been ground truthed;
- c. Amend the SNA provisions to apply to every piece of indigenous vegetation that meets the criteria for an SNA contained in Appendix 2 or those areas mapped as such on the planning maps; and
- d. Promulgate a series of plan changes specific to each geographical area as a subsequent process to reintroduce the full mapping concept back into the District Plan, and delete the application of the general SNA criteria from each geographical area through each plan change.

98. In my opinion, while the proposed approach could, overall, result in the protection of areas of significant indigenous vegetation and significant habitats of indigenous fauna, there are some details that need to be further refined.

99. This is in the context of the critical policy directives with respect to significant indigenous biodiversity,⁴³ that the 'significance' criteria are more than an assessment of indigenous vegetation and include habitats that could be in part or largely exotic vegetation,⁴⁴ and that any maps are a static picture of a dynamic indigenous biodiversity.

100. Critical, then, to any policy and rules regime that provides the necessary level of protection for indigenous biodiversity is part c of the recommended approach given

⁴³Section 6(c) of the Act – protect Significant Natural Areas, policy 11(a) of the Coastal Policy Statement – avoid adverse effects on listed indigenous biodiversity, policy 11(b) of the Coastal Policy Statement – avoid significant adverse effects on listed indigenous biodiversity, policy 11.2 of the Regional Policy Statement – not reduce the significance of vegetation or habitat, method 11.2.2 – preference for avoiding adverse effects.

⁴⁴This is an issue with the protection of the habitat of, for example, long-tailed bats and North Island brown kiwi.

above – the objectives, policies and rules need to apply to all areas that meet the 'significance' criteria in Appendix 2 of the proposed Plan, whether the area is mapped or not.

101. I am also concerned about part d of the recommended approach. The recommended deletion of “the application of the general SNA criteria from each geographical area through each plan change” is based on two assumptions.
102. The first assumption is that all areas of significant indigenous vegetation and all significant habitats of indigenous fauna will be identified in the area by area mapping process.
103. The second assumption is that there will be no dynamic change to the boundaries of the mapped sites. The dynamic expansion of areas of significant indigenous vegetation, and of the significant habitats of indigenous fauna is to be expected.
104. If general Significant Natural Area criteria do not continue to apply, in addition to mapping, then there will be a gap in the recognition and provision for significant natural areas, and in giving effect to policy 11(a) of the Coastal Policy Statement and to policy 11.2 of the Regional Policy Statement.
105. The third concern I have about the recommended approach is a relatively minor one – the potential loss of information if mapped Significant Natural Areas that have not been subject to a site inspection are deleted from the planning maps.⁴⁵
106. If the approach of retaining the “ground-truthed” Significant Natural Area sites in the proposed Plan maps set out in paragraph 66a in Part 1 of the 21A Hearing Report is accepted, I would recommend that the other Significant Natural Area sites currently mapped in the proposed Plan should be retained as an information layer in the Plan.

Amendments to proposed Plan to give effect to recommendations

107. Taking into account my concerns about aspects of the recommended approach to Significant Natural Areas, I consider that amendments to the proposed Plan's policies and rules are necessary in order to give effect to the recommended approach.⁴⁶

⁴⁵Recommendation b.

⁴⁶Later in this evidence I discuss the objectives, policies and rules in section 3.1 Indigenous Vegetation and Habitats, of the proposed Plan. The changes recommended here are repeated in the changes I identify in that section of my evidence.

Policy 3.2.2

Submission 585.45 by the Director-General of Conservation, section 9 in part 1 of the 21A Hearing Report

Further submission FS1293.33 opposing submission 575.5 by Fulton Hogan Limited, paragraph 170 in part 1 of the 21A Hearing Report

108. Policy 3.2.2 is a policy on identifying and recognising areas of significant indigenous vegetation and significant habitats of indigenous fauna. In my opinion, this policy needs significant revision to (a) provide for the recommended approach to mapping, (b) properly account for unmapped areas of significant indigenous biodiversity, and (c) give effect to policy 11.2 of the Regional Policy Statement:⁴⁷

3.2.2 Policy – Identify and Recognise

- (a) Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as being any area that meets one or more of the criteria in Appendix 2 of this Plan. in accordance with the Waikato Regional Policy Statement and identify as Significant Natural Areas
- (aa) Recognise that areas of significant indigenous vegetation and significant habitats of indigenous fauna within the Waikato District include both sites identified in the Plan maps as Significant Natural Areas, and sites that are not recorded on the Plan maps.
- (b) Ensure the values and attributes of any area of significant indigenous vegetation and/or significant habitats of indigenous fauna are not reduced and preferably enhanced. Recognise and protect Significant Natural Areas by ensuring the characteristics that contribute to their significance are not adversely affected.

Significant Natural Area Definition

Further submission FS1293.54 in support of submission 746.22 by The Surveying Company, paragraphs 685 to 693 in part 2 of the 21A Hearing Report

109. The submission by The Surveying Company sought an extension to the definition of 'Significant Natural Area' to include unmapped significant indigenous biodiversity.

110. The recommendation in the 21A Hearing Report is to expand that definition to:

Means an area of significant indigenous biodiversity that is identified as a Significant Natural Area on the planning maps or that meets one or more

⁴⁷In section 9 of Part 1 of the 21A Hearing Report, there is extended discussion of policy 3.2.2, and of the submissions and further submissions on it. The recommendation is to delete the policy. I do not agree with that recommendation. This is discussed further at paragraphs 271 to 279 of this evidence.

of the criteria in Appendix 2 Criteria for Determining Significance of Indigenous Biodiversity.

111. I support this recommended amendment to the definition. It is a necessary consequences of the revision of policy 3.2.2.

Rules

112. Ensuring the rules recognise and provide for the protection required under section 6(c) of the Act is more complex.
113. It is straight forward for any discretionary or non-complying activities as any relevant resource management matter can be considered when a decision is made on any such application.
114. For controlled and restricted discretionary activities, effects on indigenous biodiversity generally, and on the values and attributes of areas of significant indigenous vegetation and significant habitats of indigenous fauna cannot be considered unless these are matters identified as a matter of control or discretion.
115. At a minimum, it is recommended that the following mater of control or discretion be added to controlled or restricted discretionary land use and subdivision rule in the proposed Plan:

Effects on the values and attributes of any Significant Natural Area.

116. This is, of course, unless any particular controlled or restricted discretionary rule already provides for such a matter of control or discretion.
117. The complexity arises with permitted activity rules and unmapped Significant Natural Areas.
118. Permitted activities need to be certain, in terms of any performance standards that apply. This is readily achievable for mapped areas with a performance standard that the activity is not within a (mapped) Significant Natural Area.
119. It is the unmapped but significant areas that cause complications with any permitted activity performance standard.
120. How can a property owner be certain about whether there is an unmapped Significant Natural Area on her property to which a permitted activity Significant Natural Area rule applies?

121. Three options for addressing that are:
- (a) ignore unmapped significant indigenous biodiversity in permitted activity rules, this would be appropriate for some rules;
 - (b) add some indigenous vegetation threshold performance standard to permitted activity rules, this can be easily applied to permitted activity vegetation clearance rules; or
 - (c) qualify permitted activity rules so they do not apply when a defined threshold (or thresholds) is met with respect to the contiguous area and/or height of indigenous vegetation.⁴⁸
122. This is a matter that requires further design work if the recommended approach to identifying and protecting Significant Natural Areas is to work effectively.

KAURI DIEBACK PROVISIONS

Submissions 585.5, 585.7 and 585.33 by Director General of Conservation, paragraphs 304 to 318 in part 1 of the 21A Hearing Report, section 43 of Appendices 4 and 6 to 21A Hearing Report

123. The Director-General's submissions seek issues, objectives, policies and rules to be added to address the management of *Phytophthora agathidicida* (**kauri dieback disease**).
124. The 21A Hearing Report is to include a reference to earthworks in the vicinity of kauri in the biodiversity policies, and to include a performance standard in permitted activity earthworks rules such that any earthworks within "a kauri root zone"⁴⁹ would require consent as a restricted discretionary activity. Instead of applying such an approach across all of the Waikato District, the 21A Hearing Report suggests that a more realistic approach to target zones where kauri trees are most likely to be present.
125. My recent involvement in this kauri dieback disease and district and regional plan provisions includes:
- (a) involvement in mediation over appeals against the kauri dieback disease earthworks regional rule in the Auckland Unitary Plan;

⁴⁸For example, a permitted activity rule may state that it does not apply in any contiguous area of predominantly indigenous vegetation of 1 hectare or more, based on the assumption that indigenous vegetation of less than this area is very unlikely to be significant indigenous biodiversity. Examples of this sort of rule can be found in the Far North, Kaipara and Whangarei District Plans.

⁴⁹No definition is proposed to be included in the proposed Plan for "kauri root zone". A definition is provided in a Regional Council publication *Protecting Kauri: A Rural Landowner's Guide*.

- (b) evidence before the Environment Court on including objectives, policies and rules in the proposed Thames-Coromandel District Plan on kauri dieback disease, and the development of the restricted discretionary management plan rule set out in Appendix 6 to the 21A Hearing Report; and
 - (c) evidence on the inclusion of objectives, policies and rules relating to kauri dieback disease and earthworks and vegetation clearance in recent proposed Plan Changes to the Whangarei District Plan.⁵⁰
126. While I agree that earthworks in the vicinity of a kauri should not be a permitted activity I consider that the recommended amendments are insufficient and are based on an incomplete understanding of: the kauri dieback disease, the long term prognosis for kauri, current information on the geographic spread of kauri and kauri dieback disease, the main vectors for the spread for the disease, the relevant policy directives from the Act, and from national and regional policy statements, and evolution of provisions in district and regional plans to address kauri dieback disease.
127. I rely on the evidence of Dr Beauchamp on the nature of kauri dieback disease, where it has been found, how it is spread, the long term prognosis, and its relevance in Waikato District.
128. I note that map in the 21A Hearing Report showing incidence of kauri dieback and kauri distribution natural range identifies only a portion of the kauri within Waikato District that were identified in a 2016 aerial surveillance flight of Waikato District.⁵¹ Further, the map shows known locations for kauri dieback disease predominantly on public land.⁵² There will be other unknown sites where there is kauri dieback disease is present but has not been detected yet.
129. The evidence of Dr Beauchamp is that there is a real risk that kauri dieback disease will spread from currently contaminated areas⁵³ into new areas of indigenous vegetation from contaminated sites outside such areas. Stopping long range spread of the disease is required to maintain kauri species, including in forests.⁵⁴

⁵⁰The Director-General has appealed the decision on kauri dieback provisions in these proposed Whangarei Plan Changes.

⁵¹This map is found at <https://www.kauridieback.co.nz/kauri-maps/>

⁵²Pers comm Dr Beauchamp

⁵³Given the time it takes for symptoms of kauri dieback to show, it may not be realised that an area is contaminated for years or even decades. Dr Beauchamp also points out that sites may remain contaminated well after any surface evidence of kauri has been removed, paragraph 8.8 of his evidence.

⁵⁴See paragraph 11.4 of Dr Beauchamp's evidence.

130. I now briefly address high level policy guidance on kauri dieback disease, functions of territorial authorities under the Act, and the relationship between the Biosecurity Act 1993 and the district plan provisions, and the Waikato Pest Management Strategies. I then consider if kauri dieback disease is resource management issue that needs addressing in the district plan; and, if so, how it should be addressed.

High level policy guidance summary

131. Part 2 of the Act, the Coastal Policy Statement and the Regional Policy Statement, collectively, provide policy guidance in favour of, treating kauri dieback disease as a resource management issue, and on how to address it.

132. In summary this guidance is:

- safeguard the life-supporting capacity of (kauri) ecosystems;
- recognise and provide for the protection of areas of significant indigenous vegetation (kauri);
- recognise and provide for the relationship of Māori and their culture and traditions with their ancestral lands, sites and other taonga;
- have particular regard to kaitiakitanga, the exercise of stewardship and the intrinsic values of (kauri) ecosystems;
- take into account the principles of Te Tiriti o Waitangi, including active protection;
- avoid adverse effects of subdivision, use and development on kauri from kauri dieback disease in the coastal environment;⁵⁵
- take a precautionary approach;
- promote positive biodiversity outcomes to maintain the full range of ecosystem types and at least maintain their full spatial extent to achieve healthy ecological functioning of ecosystems; and
- require activities to avoid the degradation of areas of significant indigenous vegetation in preference to remediation or mitigation.

⁵⁵Kauri is classified as Threatened – Nationally Vulnerable because of kauri dieback disease, paragraph 5.7 of Dr Beauchamp's evidence.

District Council functions and kauri dieback disease

133. Is addressing kauri dieback disease within the functions of a territorial authority set out in section 31 of Act?

134. This question was considered by the Environment Court in its first interim decision on kauri dieback provisions in the proposed Thames-Coromandel District Plan.⁵⁶

135. The conclusion was that addressing the management of kauri dieback disease in a district plan was within the functions set out in section 31 of the Act, namely:

31(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 and potential effects of the use, development, or protection of land, including for the purpose of—

(iia) the prevention or mitigation of any adverse effects of the use, development or protection of contaminated land:

(iii) the maintenance of indigenous biological diversity:

136. Kauri dieback disease is an example of contaminated land. Kauri dieback disease reduces indigenous biological diversity.

Biosecurity Act 1993 and pest management strategies

137. There is an overlap between the Biosecurity Act and the Resource Management Act with respect to addressing kauri dieback disease.

138. This was considered by the Environment Court in the first interim decision on the appeal by the Director-General seeking that the earthworks rules in the proposed Thames-Coromandel District Plan include provisions to minimise the risk of the spread of kauri dieback disease.

139. On this overlap the Court said:

[64] We have considered s 7A⁵⁷ of the [Biosecurity Act] addressing this relationship with the RMA, from which we discern no legislative intention to override the RMA; indeed, the converse, built on an assumption that

⁵⁶See paragraphs 43 to 55 of *Director-General of Conservation v Thames-Coromandel District Council*, first interim decision, [2018] NZEnvC 133.

⁵⁷Section 7A of the Biosecurity Act sets out the relationship between the Biosecurity Act and the Resource Management Act.

the RMA has a clear relevant legislative foundation for present purposes, with s 7A [Biosecurity Act] legislating merely for tightly constrained exemptions therefrom.

[65] Using the statutory interpretation framework approved by the High Court in the above case⁵⁸ and noting that here again there appears to be a readily identifiable policy reason for the two pieces of legislation to be read together, we find that the two statutes can easily be reconciled.

*Waikato Regional Pest Management Plan 2014-2024 (Regional Pest Management Plan)*⁵⁹

140. One instrument under the Biosecurity Act is a regional pest management plan, prepared for the eradication or effective management of the particular pests identified in that regional pest management plan. Regional Councils are responsible for preparing these plans.

141. The Regional Pest Management Plan was made operative on 28 August 2014.

142. Section 7.3 of the Regional Pest Management Plan is a discussion of kauri dieback disease, particularly within Waikato Region. It records that in August 2014 there was one confirmed site with kauri dieback disease present; a site on the Coromandel Peninsula.⁶⁰

143. It is also recorded that a survey of the entire region had not been completed at the time that the Regional Pest Management Plan was made operative.⁶¹

144. The last two paragraphs of this section of the Regional Pest Management Plan are:

Waikato Regional Council biosecurity staff, working with the joint agency programme, will visit private properties where landowners are concerned about the health of kauri and assess whether symptoms typical of kauri dieback are present. Soil samples will be taken where necessary to confirm if kauri dieback is present.

If kauri dieback is identified on a private property, a site- specific plan for that property will be developed aimed at managing risks associated with various vectors and activities on the site identified with soil movement.⁶²

⁵⁸[2016] NZHC 2036 at [11], *Federated Farmers v Northland Regional Council*

⁵⁹This document used to be called a regional pest management strategy. However an amendment to the Biosecurity Act changed its title from a strategy to a plan.

⁶⁰More contaminated sites have been found since then.

⁶¹There was an aerial surveillance flight of the Waikato District in 2016.

⁶²Page 233 of the Regional Pest Management Plan.

145. There is, however, only one rule in the Regional Pest Management Plan specific to kauri dieback disease. Rule 7.5.1 states:

No person shall knowingly communicate, cause to be communicated, release, or cause to be released, or otherwise spread *Phytophthora* taxon *Agathis* or material contaminated with *Phytophthora* taxon *Agathis* within the Hunua Ranges Pest Management Area.

A breach of this rule will create an offence under section 154N(19) of the Act and may result in default work under section 128 of the Act.⁶³

146. There is no other explicit rule in the Regional Pest Management Plan on kauri dieback. Therefore, the Pest Management Strategies cannot be relied on to protect indigenous biodiversity from the risk of kauri dieback disease.

Draft National Pest Management Plan

147. For completeness, I briefly discuss the draft National Pest Management Plan for kauri dieback. The third round of public consultation on this draft plan was conducted in early 2019. No decision has yet been announced on the final version of this plan.

148. The draft National Pest Management Plan is prepared under the Biosecurity Act to provide a consistent biosecurity management approach to kauri dieback across the four regions that are affected.⁶⁴

149. The management approach to be taken is not settled – the third round of consultation asked about two approaches. Both of the approaches propose an approach using rules for high risk areas; one also proposes a generally applying earthworks rule similar to that in the proposed Thames-Coromandel District Plan.

150. In my opinion, the draft National Pest Management Plan is not sufficiently certain to consider further.⁶⁵

Is kauri dieback disease a resource management issue for the Proposed Plan?

151. In the next few paragraphs, I assess whether kauri dieback disease is a resource management issue that the Proposed Plan needs to address. I rely on the evidence of Dr Beauchamp.

⁶³Page 235 of the Regional Pest Management Plan. Note that the name of kauri dieback disease pathogen has since changed to *Phytophthora agathidicida*.

⁶⁴Northland, Auckland, Waikato and Bay of Plenty.

⁶⁵See Dr Beauchamp's evidence, paragraphs 8.4.

152. The natural range for kauri includes the Waikato District. Kauri dieback is a disease that is fatal to kauri. There is no known cure for the disease.
153. In my opinion, the prevalence of kauri in the Waikato District, the fatal nature of kauri dieback disease and the lack of any known cure, and the inadequacy of existing controls under the Biosecurity Act, mean that kauri dieback disease is a significant resource management issue for the Waikato District.
154. The disease spreads to kauri via minute disease spores in the soil entering the kauri root system. There is no effective method to establish whether or not spores are present in soil around a kauri. Kauri can have the disease without the symptoms showing for years to decades, depending on the size of the particular tree.⁶⁶
155. Those spores are spread by activities and processes that disturb and spread soil with spores in them.
156. A natural process for spread is via the movement of water through soil. This spread tends to be over a very short distance.
157. However, the main way the disease is spread is via the movement of contaminated soil. This can be a long distance when the soil is moved by human activity.
158. This can occur in a variety of ways, ranging from natural processes such as soil erosion and spread by animals to disturbance of contaminated soil in the vicinity of kauri leading to contaminated soil residues on equipment and/or clothing being taken into or from the vicinity of a kauri tree.⁶⁷
159. This implies that any controls in a district plan to address the risk of spread of kauri dieback disease is one of a suite of measures that are needed; a district plan rule cannot encompass all activities and vectors that have a risk of spreading kauri dieback disease.
160. Notwithstanding that, it is my opinion that the control of the disturbance of soil – primarily the control of earthworks – in the vicinity of kauri through district plan rules is an important measure to reduce the risk of the spread of kauri dieback disease.

⁶⁶See paragraphs 6.9 and 8.3 of Dr Beauchamp's evidence.

⁶⁷The risk area is assessed by Dr Beauchamp as being within three times the maximum radius of the dripline of a kauri.

Amendments needed to the Proposed Plan

161. It is clear that the combination of (i) kauri dieback disease being a resource management issue, (ii) high level policy guidance, (iii) the inadequate approach to kauri dieback disease under the Biosecurity Act, and (iv) the lack of effective provisions at the regional plan level lead to the conclusion that this proposed Plan needs to include provisions designed to reduce the risk of the spread of kauri dieback disease. In particular, these provisions need to concentrate on earthworks and, to a lesser extent, the pruning and removal of kauri.

Objectives and policies

162. A question arises what is the best location for the objectives and policies? with a secondary question being can existing objectives and policies be amended, rather than new ones developed?

163. Given the intent that kauri dieback earthworks and pruning rules apply across all the zones in the Proposed Plan, and given that the effects of kauri dieback disease are on indigenous biodiversity, I consider chapter 3 of the Proposed Plan – Natural Environment – to be the appropriate place for objectives and policies relating to kauri dieback disease.

164. In my opinion, section 1 of chapter 3 of the Proposed Plan, on indigenous vegetation and habitats, is the best location for this policy guidance on minimising the risk of the spread of kauri dieback disease, along with some amendments to the Significant Natural Area policies to ensure internal consistency.

165. It is not necessary, in my opinion, to amend either of objectives 3.1.1 or 3.2.1. These objectives are generally worded and addressing the risk from kauri dieback disease is necessary to ensure indigenous biodiversity values are maintained or enhanced generally, and indigenous biodiversity in Significant Natural Areas protected.

166. Policy 3.1.2 does refer to enabling biosecurity works, and to considering pest plants and pest animals when avoiding, remedying or mitigating adverse effects on indigenous biodiversity.

167. In my opinion, neither of these considerations addresses kauri dieback disease issues. Kauri dieback disease is not a pest plant, nor is it a pest animal.⁶⁸ Enabling activities such as biosecurity works, while providing a positive effect on indigenous biodiversity values, does not cover the intent of the kauri dieback earthworks and pruning/vegetation clearance rules of ensuring that those activities are undertaken in a way that minimises the risk of spread of kauri dieback disease.

168. I recommend the following addition to policy 3.1.2(b)

(via) preventing the spread of plant pathogens and diseases, including kauri dieback disease;

169. There is one policy in the Significant Natural Areas sub-section that I consider need to be similarly amended to record the policy intent of preventing the spread of kauri dieback disease:⁶⁹

Policy 3.2.7 – Managing Significant Natural Areas

(iia) preventing the spread of plant pathogens and diseases, including kauri dieback disease;

Rules

170. Methods need to give effect to the objectives and policies. There are a range of different methods that need to be followed in order to avoid the risk of the spread of kauri dieback disease. This is because of the variety of potential vectors. Some of those methods will be voluntary measures, others are appropriately regulatory. In my opinion the rules discussed here are appropriate to include in a district plan to provide a level of certainty that, for earthworks in particular, the risk of the spread of kauri dieback disease is significantly reduced, compared to voluntary methods.⁷⁰

171. There are three important propositions that inform the design and timing of any earthworks rule⁷¹ intended to prevent the spread of kauri dieback disease.

172. Addressing kauri dieback disease is an urgent resource management issue; given the directives from Part 2 of the Act to recognise and provide for the protection of

⁶⁸A similar comment applies to other pathogens and to plant diseases such as myrtle rust.

⁶⁹This is in the context of other amendments to policies being accepted. These other changes are discussed and identified later in this evidence.

⁷⁰Paragraphs 7.1 to 7.3 of Dr Beauchamp's evidence sets out what could happen in the absence of action to address kauri dieback.

⁷¹And any supporting rules such as rules on vegetation clearance.

Significant Natural Areas, and the 'avoid adverse effects'/'no more than minor adverse effects' on indigenous biodiversity directives from the Coastal Policy Statement and the Regional Policy Statement.

173. It is not possible to say whether soil around any kauri is contaminated with kauri dieback spores or not unless the kauri is showing symptoms; it is necessary therefore to assume all soil around a kauri is contaminated, and that any rule should apply to all kauri, regardless of the underlying zoning of the land it is on.⁷²
174. The area of risk is limited, however, to what can be referred to in the 21A Hearing Report as the kauri root zone. A suitable definition to include in the proposed Plan for the 'kauri root zone' is one that is consistent with a definition accepted by the Environment Court for an earthworks rule:⁷³

Kauri root zone – the area within three times the maximum radius of the drip line of the New Zealand kauri tree

175. Any rule⁷⁴ intended to prevent the spread of (potentially) contaminated soil from around one kauri to another can be directed at activities that disturb or potentially disturb soil and ways to minimise or contain that disturbance; this requires
- (i) machinery, tools and clothing to be clean of all soil before entering the risk area around a kauri tree to undertake earthworks or other activities that could disturb the soil;
 - (ii) machinery, tools and clothing to be cleaned of all soil and plant material before leaving the risk area after the earthworks or other activity that could disturb the soil;
 - (iii) soil and plant material is left within the risk area around the kauri tree, or disposed of to a safe disposal site;
 - (iv) clearly identifying the risk area around a kauri tree as three times the radius of the dripline of the tree.⁷⁵
176. It follows from the above discussion that any kauri dieback disease risk avoidance rule needs to be directed at controlling the risk of the spread via the vector of the spread of

⁷²See paragraph 8.8 of Dr Beauchamp's evidence.

⁷³See paragraph 16 of decision [2018] NZEnvC 244.

⁷⁴Or any other rule about activities that could disturb soil in the vicinity of kauri. This would include vegetation disturbance and removal.

⁷⁵The Environment Court's final decision on a kauri dieback earthworks rule in the proposed Thames-Coromandel District Plan included the following definition: "Kauri Hygiene Zone is an area three times the maximum radius of the canopy dripline of New Zealand kauri trees in the area the subject of proposed earthworks." [2019] NZEnvC 044 Director-General of Conservation v Thames Coromandel District Council, page 16 of decision.

contaminated soil on, for example, earthmoving equipment, tools, clothing, or pruned or cut vegetation; it needs to apply across all of the district; and needs to apply to subdivision and land use.⁷⁶

177. The two activities that present the greatest risk that can readily be addressed in a district plan are earthworks and pruning or removal of vegetation in the vicinity of kauri. It is amending these rules that I now discuss.

Permitted activity v management plan v discretionary activity

178. The two other plans that have kauri dieback rules use either rely on a permitted activity standard or require a management plan. There is a proposed plan change where earthworks in a kauri root zone is provided for as a discretionary activity.
179. The Auckland Unitary Plan uses a permitted activity standard approach; where a permitted activity standard sets out hygiene requirements to be followed within three times the radius of the dripline of any kauri.
180. This has a significant enforcement issue associated with it.
181. A second difficulty with such a rule is that the hygiene requirements need to be detailed in terms of what steps must be followed, yet any permitted activity rule also must be certain.
182. A third difficulty with this particular rule is that it explicitly does not apply to earthworks that are ancillary to farming and forestry.
183. The second approach, in the proposed Thames-Coromandel District Plan, is to require a management plan to be approved as a restricted discretionary activity prior to any earthworks in the vicinity of kauri.
184. The particular restricted discretionary activity rule in the proposed Thames-Coromandel District Plan sets out in considerable detail the information required in a management plan.⁷⁷

⁷⁶One of the recommendations in the relevant section 42A report is that the 'earthworks' definition in the District Plan be replaced by the 'earthworks' definition in the National Planning Standards. That definition includes three exceptions: gardening, cultivation, and fence post holes. If the recommendation is accepted and the 'earthworks' definition replaced with the one from the National Planning Standards, it would be necessary, in my opinion, to extend any land use earthworks rule directed at preventing the spread of kauri dieback to be extended to explicitly include gardening, cultivation and the digging of holes for fence posts with the risk area around any kauri.

⁷⁷This restricted discretionary activity rule requiring a management plan is required by the Environment Court, see [2019] NZEnvC 044 Director-General of Conservation v Thames Coromandel District Council. Although this rule

185. There are advantages in a management plan approach where earthworks occur in the vicinity of more than one kauri, where the earthworks/disturbance of soil activity is on-going, and potentially in urban settings.
186. The proposed Whangarei plan changes require a discretionary activity consent to undertake subdivision earthworks within the kauri hygiene zone, and for vegetation clearance and removal within that kauri hygiene zone.⁷⁸
187. Providing for such activities as a discretionary activity could be seen as unnecessarily widening the range of matters the consent authority can consider, compared to the more focused approach with a restricted discretionary rule.
188. Overall, I prefer the restricted discretionary management plan approach. The restricted discretionary activity status limits the matters that need to be addressed in any application to those relevant to avoiding the spread of kauri dieback disease. The management plan outline provides a useful guide for applicants and decision makers, and ensures the continuing provision of information to inform the monitoring of a consent.
189. I consider the following amendments are necessary to the proposed Plan rules in all zones:
- (i) insert the definition of 'kauri root zone' stated at paragraph 174
 - (ii) if the national planning standard definition of earthworks is used,⁷⁹ then add amend the definition so that it is:

earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but except within the kauri root zone, excludes gardening, cultivation, and disturbance of land for the installation of fence posts.
 - (iii) add the following performance standard to all permitted activity earthworks and vegetation pruning and clearance rules in all zones:

applies in rural parts of the Thames-Coromandel District, the Environment Court has required a similar approach be applied to the urban and semi-urban parts of the district. This is still underway.

⁷⁸It currently only applies to subdivision earthworks and to vegetation clearance in two zones. An appeal is seeking to extend the provisions over more zones. The important thing, regardless of which earthworks definition is used, is that it covers all earthworks, as all earthworks in the vicinity of kauri are a risk.

⁷⁹The reason for this is explained at footnote 76.

the activity is not within a kauri root zone

- (iv) the insertion of a new restricted discretionary activity rule that requires a management plan for earthworks and vegetation pruning and removal within a kauri root zone (the same wording as the equivalent rule in the proposed Thames-Coromandel District Plan, but extended to include vegetation pruning and removal, and with 'kauri root zone' replacing 'kauri hygiene zone')⁸⁰
- (v) the insertion of a further discretionary activity rule where the restricted discretionary activity rule described in (iv) cannot be complied with.

LONG-TAILED BAT PROTECTION

Submission 585.38 by Director-General of Conservation, paragraphs 299 and 300 in part 1 of the 21A Hearing Report and section 2 of Appendix 4 to the 21A Hearing Report

Further submission FS1293.13 by Director-General of Conservation in support of submission 81.28 by Waikato Regional Council

- 190. The Director-General is seeking the addition of mapping, objectives, policies and rules which recognise bat zones and tree protection.
- 191. The 21A Hearing Report recommendation is to reject the submission because of a lack of spatial data on long-tailed bats. The assessment is that although rules may be appropriate where bat habitat mapping has occurred, that spatial data has not been provided.⁸¹
- 192. Ms Thurley provides evidence for the Director-General that explains the lifestyle of long-tailed bats and outlines potential adverse effects on long-tailed bats. She provided maps showing where long-tailed bats have been detected within Waikato District.
- 193. I rely on that evidence in this discussion on including provisions in the proposed Plan to protect long-tailed bat habitat so long-tailed bat populations are not, as far as practicable, further reduced.
- 194. There are several important factors to consider with respect to the sustainable management of long-tailed bats:⁸²

⁸⁰This rule is set out in Appendix 6 to the 21A Hearing Report. The statement of matters of discretion listed in 2B.a) will need expanding when the rule is copied across. Clause 3A is not relevant and need not be copied across.

⁸¹Paragraph 300 in part 1 of the 21A Hearing Report.

⁸²For more detail on these factors see the evidence of Ms Thurley.

- long-tailed bats are Threatened -Nationally Critical, this is the most stringent threat classification;
- the projection is that, unless long-tailed bats and their habitat are protected, the species will experience a more than 70% decline in numbers over the next three generations;
- long-tailed bat habitat has to provide for roosting, foraging, commuting, and socialising activities, all within a long-tailed bat's home range;
- long-tailed bat habitat in the Waikato includes exotic as well as indigenous vegetation and roost trees;
- adverse effects on long-tailed bats and their habitats include light intrusion, loss of roost trees, removal of linear (vegetation) features, pest predation, and general disturbance; and
- long-tailed bats have been detected in parts of the Waikato District such as around Hamilton and Huntly, south of Raglan, and south of the Hunua Ranges;
- it is certain that long-tailed bats are present in other parts of Waikato District, it is just that much of the area has not yet been surveyed for their presence.

195. Long-tailed bat habitat is significant habitat of indigenous fauna because it meets criterion 3 in Appendix 2 of the proposed Plan.

196. Thus, the proposed Plan needs to recognise and provide for the protection of long-tailed bat habitat. This protection needs to include the often significant portion of long-tailed bat habitat that is exotic vegetation.

197. A different approach to protection than that provided in the proposed Plan for other Significant Natural Areas needs to be followed. In addition, in my opinion, the approach to the protection and management of long-tailed bat habitat needs to be cautious in areas which have not been surveyed, given the Nationally Critical threat status.

198. I recommend the following strategic approach:

- (i) establish long-tailed bat specific mapped Significant Natural Areas covering a 7.2 km radius around each site where long-tailed bats have been confirmed as present;

- (ii) provide for activities and subdivision within these mapped long-tailed bat specific Significant Natural Areas⁸³ as requiring, at a minimum, restricted discretionary consent, with the matters of discretion including impacts of long-tailed bats and their habitat; activities that would be included under this rule would be removal of linear planted features such as shelter-belts, removal of trees which have a larger breast height diameter than 20 centimetres for indigenous and exotic trees, limiting new external lighting, activities in gullies that would disturb or reduce natural darkness and quiet within those gullies, structures such as roads and bridges which can interfere with bat flyways, and more intense uses of land;
- (iii) outside these long-tailed bat specific Significant Natural Areas, take a cautious approach over the potential presence of long-tailed bats by including a further matter of control or discretion, as the case may be, to controlled and restricted discretionary activity rules that relates to effects on long-tailed bats and their habitat; and
- (iv) include policy guidance relevant to long-tailed bats and their habitats; and
- (v) if the 21A Hearing Report recommendation to re-survey areas for 'significance' is accepted, then ensure that this re-surveying exercise includes surveying for the presence of long-tailed bats.

Implementing this strategy

199. I consider that the following amendments to policies are necessary to implement this strategic approach to long-tailed bats and their habitat:

Policy 3.2.2 Policy -Identify and Recognise

(ab) Recognise that significant habitat for indigenous species can include areas of exotic vegetation;⁸⁴

Policy 3.2.7 – Managing Significant Natural Areas

(a) (iiia) Protecting and enhancing habitat for threatened and at risk species;

200. And that the following amendments to existing rules and insertion of further rules would be required, in line with the strategy outlined above:

⁸³These long-tailed bat specific Significant Natural Areas are likely to, in part, overlap with other Significant Natural Areas and other identified special areas.

⁸⁴Other recommended amendments to policy 3.2.2 are given at paragraph 108 of this evidence. Further amendments to the objectives and policies in section 3.1 of the proposed Plan are considered later in my evidence.

- (i) the insertion of a further performance standard in the permitted activity land use rules and controlled activity subdivision rules in all zones that occur within mapped long-tailed bat Significant Natural Areas:

the activity is not within a long-tailed bat Significant Natural Area

- (ii) the insertion of a further restricted discretionary activity rule applying to land use activities and subdivision in all zones that occur within mapped long-tailed bat Significant Natural Areas applying where the performance standard in (i) is not met, with a matter of control being:

any actual and potential effects on long-tailed bats and their habitat

- (iii) the insertion of the further matter of control or discretion applying to controlled and restricted discretionary land use and subdivision of sites located outside any mapped long-tailed bat Significant Natural Area:

any actual and potential adverse effects on long-tailed bats and their habitat

BIODIVERSITY OFFSETS AND ENVIRONMENTAL COMPENSATION

Policy 3.2.3, section 10 in part 1 of the 21A Hearing Report

Submission 585.45 by the Director-General of Conservation

Further submission FS1293.34 by the Director-General of Conservation opposing submission 575.7 by Fulton Hogan Limited

Policy 3.2.4, section 11 in part 1 of the 21A Hearing Report

Submissions 585.47 and 585.48 by the Director-General of Conservation.

Further submission 1293.45 by the Director-General of Conservation opposing submission 742.6 by the New Zealand Transport Agency

Submission 585.14 by the Director-General of Conservation, section 27 in part 2 of the 21A Hearing Report

Submission 585.9 and 585.10 by the Director-General of Conservation, section 29 in part 2 of the 21A Hearing Report

201. Because the mitigation hierarchy is an intrinsic part of biodiversity offsetting, in this section I consider policies 3.2.3⁸⁵ and 3.2.4, Appendix 6 and definitions for 'biodiversity offsets' and 'environmental compensation' as parts of this one topic.

202. The Director-General's submissions seek

⁸⁵There is also an overlap between policies 3.2.2 and 3.2.3, which is discussed in the next section of my evidence at paragraphs 275 to 277.

- an amendment to the policy 3.2.3—Management hierarchy—to reinforce the preference for avoiding adverse effects;
 - amendments to policy 3.2.4—Biodiversity offsetting—to clarify the mitigation hierarchy and to provide for environmental compensation measures;
 - add references to Appendix 6, Biodiversity Offsetting;
 - insert definitions for “biodiversity offset” and “environmental compensation”
203. The Director-General's further submissions oppose exceptions being added policy 3.2.3 for mineral and aggregate extraction, and to modifying part of policy 3.2.4 so the net loss is worked towards, but not necessarily achieved.
204. The 21A Hearing Report recommendations are to accept the change to policy 3.2.3 sought by the Director-General, accept in part the submissions on policy 3.2.4 by adding the addition of a clause about environmental compensation; accept the further definitions sought, and accept part of the submission on Appendix 6.
205. The 21A Hearing Report recommends accepting further submissions by the Director-General on policy 3.2.3 and to accepting in part his further submission on policy 3.2.4.
206. The evidence of Dr Corkery provides detailed background on biodiversity offsets, the mitigation hierarchy, limits to offsets and compensation, and environmental compensation. I rely on that evidence.
207. In my opinion, there are some basic principles that apply with regard to biodiversity offsets. In summary these are:
- (i) a mitigation hierarchy applies, with avoidance, remediation and mitigation to be applied, in that order, and to the fullest extent practicable, before biodiversity offsetting and environmental compensation should be considered;
 - (ii) biodiversity offsetting is off-site biodiversity protection and enhancement measures that (are intended to) result in, at a minimum, no net loss of biodiversity values, and preferably a net gain;
 - (iii) environmental compensation is where off-site biodiversity measures which result in a lesser loss of biodiversity values than would occur if the measures were not undertaken, and should be applied as a last step in the mitigation hierarchy;

- (iv) the acknowledgment that there will be occasions where biodiversity offsetting and/or environmental compensation are not appropriate, and that the proposed development should not proceed.
208. These matters are expanded on in Appendix 6 to the proposed Plan, and in guides published by central and local government.⁸⁶
209. Notwithstanding, in my opinion, the biodiversity offsetting-related policies should explicitly reflect these principles. This leads me to the following comments and recommendations with respect to policies relevant to biodiversity offsetting.

Policy 3.2.3

210. This policy sets out the mitigation hierarchy as it applies within areas that meet the Appendix 2 'significance' criteria.⁸⁷ Following the mitigation hierarchy is a necessary first step to reaching the biodiversity offsets option.
211. In my opinion, it would assist readers and users of the proposed Plan for the policy to emphasise that the first step is to avoid adverse effects to the full extent practicable. This is consistent with the Regional Policy Statement's stated preference for avoidance over remediation or mitigation.⁸⁸
212. I agree with the Director-General's submission on this point.
213. I also consider that it is inconsistent with the Regional Policy Statement to qualify the avoidance statement in the policy with an exception to that avoidance for specific activities that need to be enabled. I agree with the 21A Hearing Report recommendation that the reference to this exception be deleted.
214. I also agree with the recommended deletion of the adjective "significant" in clause (a)(i) of the policy, as only avoiding significant adverse effects on indigenous biodiversity is contrary to the directives from section 6(c) of the Act, policy 11 of the Coastal Policy Statement and policy 11.2 and method 11.2.2 of the Regional Policy Statement.

⁸⁶*Guidance on Good Practice Biodiversity Offsetting in New Zealand* is a Department of Conservation guide produced in 2014. A more recent guide (September 2018) has been published by the Local Government Association: *Biodiversity Offsetting Under the Resource Management Act*.

⁸⁷The policy uses the term "Significant Natural Areas". Earlier in my evidence I explained why this needs to change to a reference to area than meets the Appendix 2 'significance' criteria, or similar.

⁸⁸Method 11.2.2(b) of Regional Policy Statement.

215. I do note, however, that the deletion of the word 'significant' is also required from policy 3.2.3(a)(iv) to ensure that the policy is consistent with the Regional Policy Statement and with the recommended amendments to policy 3.2.4.⁸⁹
216. The 21A Hearing Report recommended amendments to this policy include adding a clause on something called 'economic compensation'.⁹⁰ This is explained in paragraph 187 of the 21A Hearing Report as
- My understanding of the term 'environmental compensation' within a district plan is that this would allow for a financial payment that could be used to enhance another area of indigenous biodiversity.”
217. I first heard the term 'environmental compensation' being used during negotiations over appeals to the Northland Regional Policy Statement in 2013 and 2014. It was put forward by some parties to cover situations where partial offsetting of residual adverse effects occurs, that is, where the offsetting does achieve no net loss.
218. The Director-General is seeking the insertion of a definition of 'environmental compensation' in the proposed Plan, and the inclusion of a further bullet point about environmental compensation in policy 3.2.4.
219. Other parties also seek provision for 'environmental compensation' in the proposed Plan's indigenous biodiversity policies.
220. I do not agree with changing the term to a reference to 'economic compensation'. I consider that reflects a misunderstanding of the term 'environmental compensation'.
221. Further, I do not consider that environmental compensation should be an option in areas that meet the 'significance' criteria.
222. Policy 11.2 of the Regional Policy Statement is clear that the characteristics (values and attributes) that make an area 'significant' are not to be reduced. Yet 'environmental compensation' intrinsically results in a reduction in the values and attributes that make an area 'significant'.
223. In my opinion, it follows that environmental compensation, as a management tool, should only be available outside areas that meet the significance criteria in Appendix 2 of the proposed Plan. This can be achieved by transferring clause 3.2.3(a)(v) to the new

⁸⁹See paragraph 215 of this evidence.

⁹⁰Dr Corkery discusses 'environmental compensation' in section 9 of her evidence.

policy 3.1.2A, along with changing “economic compensation” to “environmental compensation”.

224. With these amendments, policy 3.2.3 is:

3.2.3 Policy - Management hierarchy

(a) Recognise and protect indigenous biodiversity within Significant Natural Areas by:

- (i) avoiding the **significant** adverse effects of vegetation clearance and the disturbance of habitats ~~unless specific activities need to be enabled in the first instance; then~~
- (ii) remedying any effects that cannot be avoided; then
- (iii) mitigating any effects that cannot be remedied; and
- (iv) after remediation or mitigation has been undertaken, offset any **significant**⁹¹ residual adverse effects in accordance with Policy 3.2.4.

~~(v) If offsetting of any significant residual adverse effects in accordance with Policy 3.2.4 is not feasible then economic compensation may be considered.~~

Policy 3.2.4

225. This policy sets out more detail about biodiversity offsetting in significant areas – allowing for it to be proposed, and setting out when it could be appropriate to use biodiversity offsetting.

226. The Director-General seeks that this policy be amended to better summarise the mitigation hierarchy. I agree with such an amendment because it makes a fundamental aspect of the appropriate use of biodiversity offsetting clearer to readers of the policy.

227. The recommended approach in the 21A Hearing Report is to reject the Director-General's submission. Some changes are recommended: a simplification of part (a) of the policy, and the insertion a similar policy in section 1, to cover the use of biodiversity offsets outside areas that meet the Appendix 2 significant criteria.

⁹¹This deletion is necessary to ensure consistency with the Regional Policy Statement on biodiversity offsetting within Significant Natural Areas – see method 11.2.2(d) in the Regional Policy Statement.

228. I agree with such an approach as the Regional Policy Statement trigger for considering the biodiversity offset tool is different depending on whether the development site is within an area that meets the Appendix 2 criteria or not.
229. The submission also seeks provision for environmental compensation in policy 3.2.4. I have already explained why I consider that environmental compensation should only be considered where the consent application site is not significant in terms of the Appendix 2 criteria.
230. Part (b) of policy 3.2.4 effectively states that biodiversity offsetting will only be appropriate if it is consistent with the biodiversity offsetting framework in Appendix 6 of the proposed Plan.
231. Part (b) goes on to single out one of the 11 framework matters set out in Appendix 6.
232. In my opinion, there is a further fundamental framework matter that should be included in this policy – the limits to the use of diversity offsetting, including where threatened species are involved. This is discussed further in section 8 of Dr Corkery's evidence.
233. I also note that Appendix 6 will need to be reviewed once decisions are made on changes and additions to the biodiversity offset policies to update policy references and, potentially, provide some framework guidance on environmental compensation.
234. With the further amendments I have discussed above, policy 3.2.4 would become:

3.2.4 Policy – Biodiversity Offsetting

- (a) Allow ~~for a~~ biodiversity offsetting ~~to be offered by a resource consent applicant~~ where an activity will result in ~~significant~~ residual adverse effects on a Significant Natural Area, ~~or on indigenous biodiversity outside such Significant Natural Areas.~~
- (b) Within a Significant Natural Area, a biodiversity offset will only be considered appropriate where adverse effects have been avoided to the extent practicable, and then remedied or mitigated in accordance with the hierarchy established in Policy 3.2.3; and
- (i) the biodiversity offset is consistent with the framework detailed in Appendix 6 Biodiversity Offsetting; and
- (ii) the biodiversity offset can achieve no net loss, and preferably a net gain, of indigenous biodiversity:

- A. preferably in the affected area of Significant Natural Area; or
- B. where that is not practicable, in the ecological district in which the affected area of Significant Natural Area is located.

(iii) recognising that there are limits to the appropriate use of biodiversity offsetting, including because of the irreplaceability or vulnerability of the biodiversity affected.

New biodiversity offsetting policies in section 3.1.2

235. The 21A Hearing Report, in response to submissions, recommends the insertion of policy 3.1.2A on the effects management hierarchy outside Significant Natural Areas and policy 3.1.2B on biodiversity offsetting outside Significant Natural Areas.
236. I have already recommended that clause 3.2.3(a)(v) on environmental compensation be transferred to policy 3.1.2B.
237. There are inconsistencies in wording between policies 3.2.3 and 3.2.4 and 3.1.2A and 3.1.2B that I consider it good practice to correct.⁹²

Definitions – Biodiversity Offset and Environment Compensation

Submissions 585.9 and 585.10 by the Director-General of Conservation, paragraphs 698 to 702 in Part 2 of the 21A Hearing Report

238. The Director-General is seeking the insertion of definitions of 'biodiversity offset' and 'environmental compensation' in the proposed Plan.
239. The 21A Hearing Report recommendation is to insert both definitions sought into the proposed Plan.
240. I do not agree with the recommendation to include the definition of 'biodiversity offset' sought in the Director-General's submission because I defer to Dr Corkery's opinion that there are more recent definitions in the Local Government Association's guide *Biodiversity Offsets Under the Resource Management Act* that are to be preferred.⁹³
241. The definition sought by the Director-General refers to biodiversity offsets to compensate for "significant residual adverse biodiversity impacts".

⁹²One example is the difference in clause (a) of policy 3.2.4 and clause (a) of policy 3.1.2B.

⁹³See paragraphs 5.2, 5.7, 9.1 and 9.2 of Dr Corkery's evidence.

242. This is inconsistent with the Regional Policy Statement and the proposed Plan approach that biodiversity offsets could be considered where there are more than minor residual adverse biodiversity effects *within* Significant Natural Areas, or where there are significant residual adverse biodiversity effects *outside* Significant Natural Areas.⁹⁴
243. I note that the definition for 'biodiversity offset' sought by the Waikato Regional Council (submission 81.239) is based on the Local Government Association guide, but omits the last sentence from the definition in that document.
244. The full definition of 'biodiversity offset' which I consider should be used in the proposed Plan is:

Biodiversity offset – A measurable conservation outcome resulting from actions designed to compensate for residual, adverse biodiversity effects arising from activities after appropriate avoidance, remediation, and mitigation measures have been applied. The goal of a biodiversity offset is to achieve a no-net-loss, and preferably a net-gain, of indigenous biodiversity values. To qualify as a biodiversity offset, the action taken to secure the biodiversity gains must adhere to a set of principles that include limits to offsetting, no net loss, equivalence, additionality, and permanence.

245. The definition of 'environmental compensation' recommended by Dr Corkery is:

Environmental Compensation – positive actions (excluding biodiversity offsets) to compensate for residual adverse biodiversity effects arising from activities after all appropriate avoidance, remediation, mitigation and biodiversity offset measures have been applied.

Appendix 6 – Biodiversity Offsetting

Submission 585.14 by the Director-General of Conservation, paragraph 662 in part 2 of the 21A Hearing Report.

246. The Director-General's submission seeks three amendments to Appendix 6:
- add a reference to the *Guidance on Good Practice Biodiversity Offsetting in New Zealand*;
 - clarify that the assessment of losses and gains with any proposed biodiversity offset should be a quantitative assessment; and

⁹⁴See methods 11.1.3(a)(ii) and 11.2.2(d) in the Regional policy Statement, and (recommended new) policy 3.1.2A(a)(iv) and (recommended amended) policy 3.2.3(iv) in the proposed Plan.

- clarify that any offset not replacing biodiversity on a like for like basis should not 'trade up' from already threatened or at-risk biodiversity.

247. The 21A Hearing Report recommendation in relation to this submission is to add a reference to the guidance identified in the Director-General's submission, and to clarify that the assessment of losses and gains should be a quantitative assessment.

248. I agree with those recommendations.⁹⁵

INDIGENOUS BIODIVERSITY OBJECTIVES AND POLICIES

249. In this section I discuss the indigenous biodiversity objectives and policies on which the Director-General has lodged a submission or further submission that have not already been discussed in this evidence.

Objective 3.1.1 – Biodiversity and ecosystems

Submission 585.39 by the Director-General of Conservation, paragraphs 109 and 110 in part 1 of the 21A Hearing Report

250. The Director-General's submission is to retain the objective as notified.

251. The Hearing 21A report, in response to a submission by the Waikato Regional Council, recommends the addition of the words “to work towards achieving a no net loss of biodiversity” to the objective.

252. This proposed addition is consistent with part of policy 11.1 of the Regional Policy Statement, which includes the statement

11.1(a) working towards achieving no net loss of indigenous biodiversity at a regional scale

253. In order to provide a more comprehensive representation of policy 11.1 of the Regional Policy Statement, I consider that references to attributes and ecosystem functioning should be added. This would make the objective:

Indigenous biodiversity values and attributes and the functioning and life-supporting capacity of indigenous ecosystems are maintained or enhanced to work towards achieving no net loss of biodiversity.

⁹⁵See paragraphs 664 and 667 in Part 2 of the 21A Hearing Report.

Policy 3.1.2

Submission 585.40 by the Director-General of Conservation, paragraph 124 in part 1 of the Hearing 21A report

Submission 585.42 by the Director-General of Conservation, paragraph 125 in part 1 of the Hearing 21A report

Submission 585.43 by the Director-General of Conservation, section 18 in part 2 of the 21A Hearing Report.

Further submission FS1293.42 by the Director-General of Conservation opposing submission 680.29 by Federated Farmers of New Zealand, paragraphs 132 to 139 in part 1 of the Hearing 21A report

Note that submission 585.41 by the Director-General of Conservation is discussed in the section on kauri dieback at paragraphs 123 to 189

254. I discuss the Director-General's submissions first, then the submissions by Federated Farmers, because the Federated Farmers submission include seeking additional policies.
255. The Director-General seeks support in the policy for using eco-sourced indigenous species in any revegetation, and that it be made clear that the list of considerations in part (b) of the policy is an inclusive list, not an exclusive list.
256. The 21A Hearing Report recommendation is to insert further wording regarding eco-sourced plants, and to reject the amendment sought to the start of part (b) of the policy.
257. I agree with the addition to clause (a)(i) of the policy regarding eco-sourced plants.
258. The Director-General seeks the following rearrangement to the commencement to part (b) of the policy as follows:
- 3.1.2(b) ~~Consider the following when a~~voiding, remedying or mitigateing adverse effects on indigenous biodiversity, including by considering:
259. The contention in the 21A Hearing Report is that the existing wording achieves essentially the same outcome.
260. I disagree. In my opinion the Director-General's amendments make it clear that there are more considerations with respect to adverse effects on biodiversity than just the matters listed in i) to (xii) in part (b) of the policy.
261. I support the amendments set out in paragraph 258, above.
262. Federated Farmers submission is seeking the following amendments and additions to policy 3.1.2 to incentivise activities that maintain or enhance indigenous biodiversity –

encourage voluntary planting of indigenous plants; state that the District Council will coordinate with other agencies on identifying risks, requirements, opportunities and methods for maintaining and enhancing Waikato's biodiversity; and consider additional subdivision opportunities where significant biodiversity gains can be achieved in identified priority areas and habitat types.

263. The 21A Hearing Report considers that no change should be made to policy 3.1.2 as a result of this submission. Reasons for this are that it is an enabling policy and that it would not be appropriate to change it to an “incentivising” policy, and that the other matters are either already addressed elsewhere in the proposed Plan⁹⁶ or are covered by a further policy recommended with respect to another submission by Federated Farmers (discussed here next).
264. I agree that no change is needed to policy 3.1.2 in response to the Federated Farmers submission.

New Policy in Section 3.1

Further submission FS1293.41 by the Director-General of Conservation opposing submissions 680.28 by Federated Farmers of New Zealand, paragraphs 131 in part 1 of the Hearing 21A report

265. This Federated Farmers submission seeks a further policy in section 3.1 of the proposed Plan the Council recognises the landowners' stewardship of the land and will promote the use of non-regulatory methods for protecting and enhancing special value sites.
266. The 21A Hearing Report recommends an additional policy being inserted in section 3.1 of the proposed Plan, albeit a somewhat shorter and targeted policy than that sought by Federated Farmers.
267. I agree with that recommendation to insert the following additional policy in section 3.1:

3.1.2C Non-regulatory policy

The Council will work with landowners to promote the use of non-regulatory methods, including assistance with the establishment of protective covenants, service delivery, education, and other incentives in protecting and enhancing ecological sites.

⁹⁶For example see policy 3.2.8.

Objective 3.2.1 – Significant Natural Areas

Submission 585.44 by the Director-General of Conservation, paragraph 146 in part 1 of the 21A Hearing Report

268. The Director-General's submission is that this objective be retained as notified.
269. The recommendation in the 21A Hearing Report is that the objective be retained as notified.
270. I agree with that recommendation.

Policy 3.2.2 – Identify and Recognise

Submission 585.45 by Director-General of Conservation, paragraphs 165, 166 and 168 in part 1 of the 21A Hearing Report

Further submission FS1293.33 by the Director-General of Conservation opposing submission 575.6 by Fulton Hogan Limited, paragraph 170 in part 1 of the 21A Hearing Report

271. This submission by the Director-General of Conservation seeks that policy 3.2.2 be retained as notified.
272. The submission by Fulton Hogan Limited seeks that the effects of mineral and aggregate activities be excluded from the policy intent that Significant Natural Areas are protected.
273. The 21A Hearing Report recommendation is to reject both the Director-General's and the Fulton Hogan's submissions. I agree with those recommendations but for quite different reasons than those in the 21A Hearing Report.
274. The recommendation goes further and suggests that the policy be deleted from the proposed Plan.
275. The reasoning provided for recommending deletion of the policy is that part (a) of the policy of the policy is not needed because Appendix 2 of the proposed Plan sets out the ecological 'significance' criteria, and that part (b), allegedly, does not achieve anything not already covered by policy 3.2.3.
276. I disagree with that analysis and consider that the policy is necessary to explain how Significant Natural Areas are identified, and provide an overall policy direction for the management of such areas.

277. However, in my opinion, to achieve this it is necessary to make substantial alterations to the policy. To that extent I disagree with the Director-General's relief sought in his submission 585.45.
278. I have considered policy 3.2.2 earlier in my evidence with respect to the strategic approach to the identification of Significant Natural Areas, including in terms of submission 585.35 by the Director-General. This submission seeks that the plan be amended to manage areas that are not mapped but meet the criteria for Significant Natural Areas.
279. At paragraph 108 in this evidence I briefly set out my reasoning that leads to the following re-write of policy 3.2.2:

3.2.2 Policy – Identify and Recognise

- (a) Identify areas of significant indigenous vegetation and significant habitats of indigenous fauna as being any area that meets one or more of the criteria in Appendix 2 of this Plan. in accordance with the Waikato Regional Policy Statement and identify as Significant Natural Areas
- (aa) Recognise that areas of significant indigenous vegetation and significant habitats of indigenous fauna within the Waikato District include both sites identified in the Plan maps as Significant Natural Areas, and sites that are not recorded on the Plan maps.
- ~~(b) Ensure the values and attributes of any area of significant indigenous vegetation and/or significant habitats of indigenous fauna are not reduced and preferably enhanced. Recognise and protect Significant Natural Areas by ensuring the characteristics that contribute to their significance are not adversely affected.~~

Policy 3.2.5 – Biodiversity in the coastal environment⁹⁷

Submission 585.49 by the Director-General of Conservation, paragraphs 230 to 232 in part 1 of the 21A Hearing Report

Further submission FS1293.46 by the Director-General of Conservation opposing submission 742.7 by the New Zealand Transport Agency

280. The submission by the Director-General of Conservation seeks that this policy, which is a qualified repeat of policy 11(a) of the Coastal Policy Statement should be transferred to section 3.1—indigenous vegetation and habitats—and the reference to Significant Natural Areas removed from the policy.

⁹⁷Policies 3.2.3 and 3.2.4 are reviewed in the section on biodiversity offsets in my evidence – see paragraphs 201 to 248

281. The submission by the New Zealand Transport Agency seeks that regionally significant infrastructure be excluded from the 'avoid adverse effects' directive in this policy.
282. The recommendation in the 21A Hearing Report is that both the Director-General's and the New Zealand Transport Agency's submissions be rejected.
283. The reason that the New Zealand Transport Agency's submission should be rejected is straightforward – policy 11(a) of the Coastal Policy Statement, which is the basis for this district plan policy, applies to regionally significant infrastructure. And district plans must give effect to the Coastal Policy Statement.
284. The grounds for shifting policy 3.2.5 to section 3.1 is based on two propositions. The first is that there are matters listed in policy 11(a) of the Coastal Policy Statement that would not trigger any of the criteria for 'significance' in Appendix 2 of the proposed Plan.
285. The second is that there are areas which meet the 'significance' criteria, but which are not identified as mapped Significant Natural Areas.
286. This second proposition can be rejected if the strategic approach to Significant Natural Areas put forward in the 21A Hearing Report, and developed further in my evidence, is accepted.
287. That leaves the question of whether there are matters listed in policy 11(a) of the Coastal Policy Statement that would not trigger any of the criteria for 'significance' in Appendix 2 of the proposed Plan. This is because policy 3.2.5 only applies within Significant Natural Areas.
288. I have reviewed the table analysing this question that is set out on pages 73 and 74 in part 1 of the 21A Hearing Report, and note that criteria listed in policy 3.2.5 is the same as in policy 11(a), except that policy 3.2.5 refers to species where policy 11(a) refers to taxa, and policy 3.2.5(a)(vi) changes the policy 11(a)(vi) reference to 'other legislation' by dropping the word 'other'. A reference to threatened taxa under the IUCN system is also omitted.
289. I consider that these discrepancies between the wording of policy 11(a) of the Coastal Policy Statement and policy 3.2.5 are of no practical concern, except for the change in

in 3.2.5(a)(i) to 'species' from the use of the term 'taxa' in the Coastal Policy Statement. This narrows the meaning, because 'taxa' would include as yet unnamed species.⁹⁸

290. I favour, therefore, the use of the word 'taxa':

3.2.5 (a)(i) indigenous **species taxa** that are listed as threatened or at risk in the New Zealand Threat Classification System lists.

291. Mapping the criteria in policy 3.2.5 to the 'significance' criteria in Appendix 2 of the proposed Plan is not as straight forward.

292. However, I am advised that the 'significance' criteria would be triggered by each of the criteria in policy 3.2.5.⁹⁹ I therefore consider that there is no practical benefit in shifting policy 3.2.5 to section 3.1 of the proposed Plan. The policy would only apply to Significant Natural Areas, and so should remain in section 3.2 (which is the section providing specific policy guidance for Significant Natural Areas).

Policy 3.2.6 – Providing for vegetation clearance

Submissions 585.1 and 585.2 by the Director-General of Conservation, paragraphs 241 to 244 (submission 585.1) and 245 (submission 585.2) in part 1 of the 21A Hearing Report.

Further submission FS1293.47 by the Director-General of Conservation opposing submission 742.8 by the New Zealand Transport Agency, paragraph 251 in part 1 of the 21A Hearing Report.

Further submission FS1293.66 by the Director-General of Conservation opposing submission 924.10 by Genesis Energy, paragraph 225 in part 1 of the 21A Hearing Report.

293. The Director-General's two submissions seek the deletion of the policy provision for clearance of indigenous vegetation within Significant Natural Areas for collection of firewood for domestic use and for clearance associated with building platforms and with the development of Maori freehold land.

294. The New Zealand Transport Agency submission is seeking that provision is made for vegetation clearance within Significant Natural Areas for existing infrastructure and for new regionally significant infrastructure.

295. The recommendations made in the 21A Hearing Report with respect to these submissions is to reject the Director-General's submissions and to accept in part the New Zealand Transport Agency's submission, and provide for vegetation clearance

⁹⁸Pers comm Dr Corkery.

⁹⁹Pers comm Dr Corkery.

necessary for operating, maintaining or upgrading existing infrastructure within Significant Natural Areas.

296. This policy is setting out when to provide for the clearance of indigenous vegetation within Significant Natural Areas.

297. The important context is that Significant Natural Areas are to be managed so that the indigenous biodiversity present is protected and enhanced. It is not clear in policy 3.2.6 how providing for indigenous vegetation clearance will be limited to ensure that even with that clearance the indigenous biodiversity is still protected and enhanced.

298. [The context for this policy would be much clearer if my recommended revision of policy 3.2.2 is accepted. Notably clause 3.2.3(b) would then be:

(b) Ensure the values and attributes of any area of significant indigenous vegetation and/or significant habitats of indigenous fauna are not reduced and preferably enhanced.]

299. In my opinion, there is a case for providing for some, very limited indigenous vegetation clearance for maintaining tracks, fences and farm drains, for safety reasons, for Maaori cultural practices, for maintaining existing infrastructure and for development of Maaori freehold land.

300. I do not agree that is a sufficient need to provide for indigenous vegetation clearance within Significant Natural Areas for firewood, or for the construction of building platforms and associated access and services within Significant Natural Areas, to justify compromising the protection and enhancement of Significant Natural Areas.

301. Accordingly, I recommend that policy 3.2.6 – Providing for vegetation clearance should be revised to read as follows:

3.2.6 Policy-Providing for vegetation clearance

Subject to ensuring that the values and attributes of any Significant Natural Area are not reduced:

- (a) Provide for the limited clearance of indigenous vegetation in Significant Natural Areas when:
- (i) maintaining tracks, fences and farm drains
 - (ii) avoiding loss of life injury or damage to property
 - (iii) collecting material to maintain traditional Maaori cultural practices

~~(iv) — collecting firewood for domestic use~~

(iv) operating, maintaining or upgrading existing infrastructure

(b) Provide for the clearance of indigenous vegetation in Significant Natural Areas for ~~the construction of building platforms, services, access, vehicle parking and on-site manoeuvring and for~~ the development of Maaori Freehold Land by:

- (i) using any existing cleared areas on a site that are suitable to accommodate new development in the first instance;
- (ii) using any practicable alternative locations that would reduce the need for vegetation removal;
- (iii) retaining indigenous vegetation which contributes to the ecological significance of a site, taking into account any loss that may be unavoidable to create a building platform, services, access, vehicle parking and manoeuvring on a site;

~~(iv) — Firewood.~~

~~(iv) — operating, maintaining or upgrading existing infrastructure~~

INDIGENOUS BIODIVERSITY AND RULES

Indigenous vegetation clearance within Significant Natural Areas

Submissions 585.15 to 585.24 by the Director-General of Conservation. These submissions seek the same amendments to all rules on indigenous vegetation clearance within Significant Natural Areas. Paragraphs 432 to 437 in part 2 of the 21A Hearing Report

Submissions 585.25 to 585.31 and 585.50 to 585.52 by the Director-General of Conservation. The submissions are in support of the discretionary activity status where the permitted activity indigenous vegetation clearance rules are not met.

Further submission FS1293.14 by the Director-General of Conservation in support of submission 81.29 by Waikato District Council

- 302. The Director-General's submissions on indigenous vegetation clearance rules applying within Significant Natural Areas sought the same amendments to those rules in all zones.
- 303. The 21A Hearing Report also recommends amendments to the indigenous vegetation rules in order to implement the revised strategy for Significant Natural Areas and their identification.
- 304. I examine the indigenous vegetation clearance rules that apply in the Rural Zone and reach a conclusion about which amendments are necessary to these rules. The same

amendments should be applied to the equivalent rules in all other zones where the Director-General has lodged a submission or further submission.

305. As I have indicated above, the Director-General's submission seeks the same relief for all the rules applying to indigenous vegetation clearance within Significant Natural Areas. The 21A Hearing Report response is equally generic. It is simplest to illustrate this in the following table.

Director-General's relief	21A Hearing Report response
include a maximum vegetation clearance permitted activity rule for all purposes	no change to the current provisions
include a minimum setback distance from water bodies for all purposes	provide a 10 metre setback for indigenous vegetation clearance within a Significant Natural Area related to clearance for building, parking and vehicle manoeuvring, no setback for clearance for conservation fencing, existing drains, tracks and fences
change the permitted activity provision for manuka and kanuka removal from a maximum area cleared to a maximum volume cleared (this applies to rules 23.2.8,	retain the volume limit
any other relevant amendments are required	no comment made

306. Consideration of these indigenous vegetation rules needs to be from the basis that the overarching policy directive with regard to Significant Natural Areas. The Regional Policy Statement states this as

Policy 11.2 Protect significant indigenous vegetation and significant habitats of indigenous fauna

Significant indigenous vegetation and significant habitats of indigenous fauna shall be protected by ensuring the characteristics that contribute to its significance are not adversely affected to the extent that the significance of the vegetation or habitat is reduced.

307. For Significant Natural Areas in the coastal environment an avoid adverse effects directive applies.
308. This policy directive is reflected in the amended policies in section 3.1 of the proposed Plan that I have set out in this evidence.
309. Fundamentally this overarching policy directive means that any permitted activity indigenous vegetation clearance needs to be very restrictive.

310. Different Significant Natural Areas will have different sensitivities to loss of values due to indigenous vegetation clearance. Equally the amount of indigenous vegetation clearance for any particular purpose will vary significantly, depending on specific circumstances.
311. In my opinion, this means that a very cautious approach must be taken to providing for indigenous vegetation clearance within any Significant Natural Area.

Maximum area of clearance

312. Turning now to the other elements of the Director-General's relief. The first is the setting of a maximum area of clearance. Such an approach is very common in district plans across the country, with the variability occurring over the minimum area that can be cleared and whether that minimum area applies per 12 months or over the lifetime of the plan.
313. It is also common to have, for some clearance activities, a limit on the width of the clearance as a permitted activity. For example clearance around an existing building may be limited to a set width as a permitted activity.
314. In my opinion, there are permitted activities provided for within Significant Natural Areas that are often likely to result in adverse effects on the characteristics (values and attributes) of the Significant Natural Area for which the maximum permitted activity clearance level should be zero square metres: in other words, not provided for as a permitted activity.
315. I consider that the following should be deleted from the permitted activity indigenous vegetation clearance rules:
- new conservation fencing;¹⁰⁰
 - any removal of manuka or kanuka for domestic firewood or arts and crafts;
 - clearance for building, access, parking or manoeuvring areas, other than on Maaori freehold or customary land

316. The reason for recommending that new conservation fencing within a Significant Natural Area should not be in the permitted activity list is because the point of conservation fencing is to protect a Significant Natural Area from stock and other pest

¹⁰⁰Although I do agree with the recommended addition of 'conservation activities' in the rule.

animals. A conservation fence should, therefore, be located just outside the outer boundary of the Significant Natural Area.¹⁰¹

317. A conservation fence *within* a Significant Natural Area has a significant potential to limit connectivity and the movement of indigenous species within that Significant Natural Area. This could result in adverse effects on the values and attributes of the Significant Natural Area. It is appropriate, therefore, for any proposal for a conservation fence within a Significant Natural Area to require a resource consent.

318. With respect to the removal of manuka and kanuka for firewood, my considerations are (a) the threat status of these species, (b) the role of manuka and kanuka in the earlier stages of habitat restoration, and (c) firewood can readily be gathered from outside Significant Natural Areas.

319. The permitted activity rule with respect to buildings and access includes two performance standards:

There is no alternative development area on the site outside the Significant Natural Area, and

the total indigenous vegetation clearance does not exceed 250 m²

320. I consider that there are fundamental difficulties with relying on these two standards to ensure that, going back to the overriding planning directive states, the significance of the vegetation and habitats is not reduced.

321. First, any contention that there is no alternative development area is not subject to the robust scrutiny that would occur if a resource consent was required.

322. Second, if a house is to be located within a Significant Natural Area, there is no assessment possible with a permitted activity on which location within that Significant Natural Area would result in the lowest impact on the significant indigenous biodiversity values. Such an assessment needs to occur on a case by case, Significant Natural Area specific, basis. This requires a resource consent process.¹⁰²

¹⁰¹This comment is made in paragraph 435 in part 2 of the 21A Hearing Report: "In the instance of conservation fencing, this is one of the best tools for the protection of SNAs and is likely to be around the perimeter of an SNA rather than through the middle."

¹⁰²It cannot be a controlled activity process because consent must be given to the proposal from the applicant, including accepting the proposed location. A controlled activity consent that included any more than minor change to the location of a house and /or access route, compared to what was applied for, would be an effective refusal of consent for a controlled activity.

323. I now turn to the question of area limits on the permitted activity vegetation clearance provisions remaining after the recommended deletions identified at paragraph 315. I set out my recommendations in the table below, drawing on the proposed Thames-Coromandel District plan provisions, as these are the most recent indigenous vegetation clearance rules in the Waikato Region that have been subject to a consent order.

Rule	Provision	Recommended Limit
22.2.7 P1	removing vegetation that endangers human life or existing buildings or structures	no limit re human life but set a limit of a maximum of 10 metres clearing around existing dwellings, and other existing buildings and structures. Any clearing around these existing dwellings, and other buildings and structures to also be included in a maximum cumulative permitted clearance limit of 500 square metres per site per annum.
22.2.7 P1	maintaining existing farm drains	within 5 metres on one side of the drain, and 1 metre on the other side. Any clearing would also be included in a maximum cumulative permitted clearance limit of 500 square metres per site per annum
22.2.7 P1	maintaining existing tracks and fences	maximum width of 3.5 metres for existing fences and 5 metres for existing tracks. Any clearing would also be included in a maximum cumulative permitted clearance limit of 500 square metres per site per annum
22.2.7 P1	gathering plants in accordance with Maaori customs and values	no limit

Rule	Provision	Recommended Limit
22.2.7 P1	conservation activities	no limit This is dependent on the definition of 'conservation activities' being reviewed and tightened further as necessary because it is now being used in a permitted activity vegetation clearance rule, and not just in relation to subdivision.
22.2.7 P4 ¹⁰³	development on Maaori freehold or customary land outside the coastal environment	retain the no alternative development area standard and the limits in the notified plan (marae complex 1,500 sq m; dwelling 500 sq m; papakaainga building 500 sq m)

324. The 21A Hearing Report recommendations include adding further permitted activity rules relating to removal of manuka and/or kanuka to maintain productive pasture within a Significant Natural Area (P7), trimming or pruning of indigenous vegetation (P8), and vegetation clearance of non-indigenous species within a Significant Natural Area (P9).

325. My comments on area limits applying within these rules are:

- (i) Rule 22.2.7.P7 – maintaining productive pasture, the identified Significant Natural Area that is likely to include productive pasture is a bat protection Significant Natural Area, this rule should only apply to that, and also include a limit that the plants are no more than 15 years old;
- (ii) Rule 22.2.7.P8 – pruning and trimming of indigenous vegetation, this is already sufficiently provided for in rule P1;
- (iii) Rule 22.2.7.P9 – clearance of non-indigenous species, it is unclear the extent to which this is covered under 'conservation activities' in rule P1; also there needs to be a restriction on the clearance of potential long-tailed bat roost trees.¹⁰⁴

¹⁰³I recommend that P2, manuka and kanuka firewood, and P3 new buildings be deleted from the permitted activity rules.

¹⁰⁴I discuss this further later.

Water setback for vegetation clearance

326. One recommendation from the 21A Hearing Report is that there be a 10 metre water setback standard applied to some, but not all, permitted activity rules for vegetation within Significant Natural Areas.
327. The National Environmental Standards – Freshwater set the minimums, in terms of vegetation clearance rules in the vicinity of any natural wetland.
328. The regulations applying for vegetation clearance within, or within a 10 metres setback from, a natural wetland are
- clearance for the purpose of natural wetland restoration – permitted up to 500 square metres or 10% of the wetland, whichever is the smaller; restricted discretionary otherwise;
 - clearance for the purpose of scientific research – permitted up to 10 square metres clearance in a single area, and 100 square metres cumulatively over the wetland; restricted discretionary otherwise;
 - clearance for the purpose of constructing a wetland utility structure is a restricted discretionary activity;
 - clearance for the maintenance of a wetland utility structure is a permitted activity so long as it is limited to 2 square metres around the base of each pile or post in the utility structure or 10% of the wetland area, whichever is the smaller, and the clearance is only within 1 metre of the structure; restricted discretionary otherwise
 - clearance for construction of specified infrastructure is a discretionary activity
 - clearance for maintenance and operation of specified infrastructure and other (existing) infrastructure – permitted up to 500 square metres or 10% of the wetland, whichever is the smaller; restricted discretionary otherwise;
 - clearance for the purpose of arable land use or horticultural land use – permitted activity if it had been used for that purpose at any time between 1 January 2010 and 2 September 2020;

- clearance for natural hazard works (as defined in regulation 51 (1) of the NES Freshwater) – permitted subject to standards about land stability and the like;
 - all other vegetation clearance within, or within a 10 metre setback from, a natural wetland is a non-complying activity.
329. This is a summary of the purposes for vegetation clearance covered in the regulations and the area limits that apply. The regulations include further standards which have not been summarised here.
330. The definition of 'vegetation clearance' in the NES Freshwater includes exotic and indigenous vegetation, but excludes clearance for the maintenance or construction of stock or boundary fencing, clearance for the maintenance of shelter belts, or the grazing of pasture within the 10 metre setback from natural wetlands.
331. Although these regulations deal with the functions of regional, not district, councils, regulation 6 explicitly provides that a district plan rule may be more stringent for any resource management reason, but can only be more lenient in limited situations that do not apply to the proposed Plan's vegetation clearance rules.
332. The vegetation clearance rules in the proposed Plan currently are a mix of more stringent and more lenient rules. At paragraph 84 I identify that section 44A of the Act sets out how to reconcile the regulations and, in this case, more lenient district plan rules.
333. Identifying these for each rule is a tedious and complicated process, because the regulations apply to all vegetation whereas the proposed Plan clearance rules are largely limited to indigenous vegetation, and may or may not include area limits on clearing.
334. I suggest that the simplest method of aligning the proposed Plan and the Freshwater National Environmental Standards in a way that alerts readers of the proposed Plan would be
- (i) the insertion of a further non-complying activity rule for vegetation clearance activities within, and within 10 metres of, a natural wetland that are provided for as a non-complying activity in the National Environmental Standards for Freshwater.
 - (ii) the inclusion of either advice or a rule restricting the clearance of exotic vegetation within, or within a setback of 10 metres from, a

natural wetland in line with the regulations in the Freshwater National Environmental Standards.

335. This would also, in my opinion, adequately address the Director-General's submission seeking a setback from water bodies for vegetation clearance.

Other relevant amendments required to the vegetation clearance rules

336. This is the final item of relief in the Director-General's submission on vegetation clearance within Significant Natural Areas.

337. I have already identified the deletion of permitted activity provision for new buildings and for firewood clearing within Significant Natural Areas as appropriate and necessary in order to give effect to the relevant policy guidance.

338. Addressing the risk of kauri dieback disease and the protection of long-tailed bats also require further amendments to the vegetation clearance rules. Reasons for this is discussed in the sections of my evidence on kauri dieback disease and on the protection of long-tailed bats.

339. The following further permitted activity standards are, in my opinion, part of a rules package addressing these two matters:

The vegetation clearance does not occur within the kauri hygiene zone.

Within a long-tailed bat Significant Natural Area, vegetation clearance shall not include any indigenous or exotic tree with a trunk diameter at breast height greater than 15 cm.

340. The first of these performance standards relating to the kauri hygiene zone should also be inserted in the vegetation clearance outside Significant Natural Area rules.

341. Any non-compliance with these standards would be appropriately provide for as a restricted discretionary activity.

342. Long-tailed bat roosts can be in suitable trees that are within domestic or ornamental landscape planting and in planted shelter belts.¹⁰⁵ The intention with the revised vegetation clearance rules presented in my evidence is that there be protection for actual and potential long-tailed bat roosts within long-tailed bat Significant Natural Areas.

¹⁰⁵Example of actual and potential long-tailed bat roosts within ornamental planting and of the importance of a planted shelter-belt to long-tailed bats for commuting and foraging were given at the Environment Court hearing on a proposed subdivision in southern Hamilton. In this case the trees and the shelter-belt were exotic species.

343. The definition of 'indigenous vegetation' in the proposed Plan precludes such a rule applying to indigenous species where these have been planted.

344. This can be corrected with the following amendments to the definition of 'indigenous vegetation':

Indigenous vegetation

Means vegetation that occurs naturally in New Zealand or arrived in New Zealand without human assistance. For the purposes of this plan, domestic or ornamental/~~landscaping~~ landscape planting or planted shelter belts comprising indigenous species are not included unless within a long-tailed bat Significant Natural Area.

NES Plantation Forestry and significant indigenous biodiversity

Submission 585.8 by the Director-General of Conservation, paragraph 629 in part 2 of the 21A Hearing Report, (also relevant discussion at paragraphs 542 to 544)

345. The Director-General is seeking that the forestry provisions in the proposed Plan be amended to afford greater protection to indigenous vegetation and Significant Natural Areas within or adjacent to plantation forests.

346. The recommendation in the 21A Hearing Report is to reject the submission and to rely on the NES Plantation Forestry. Two of the regulations in the NES Plantation Forestry are cited as examples of the protection provided to Significant Natural Areas within and adjacent to production forests.

347. In response to another submission, the 21A Hearing Report recommends the following statement be added to Appendix 2 of proposed Plan

The Appendix does not apply to plantation forestry.

348. I accept that the NES Plantation Forestry provides protection for Significant Natural Areas within or adjacent to production forests.

349. The provisions include

- Regulation 10 – permitted activity condition that afforestation must not occur within a significant natural area;
- Regulation 78(1) – permitted activity condition that replanting must not occur closer than the stump line to an adjacent significant natural area;

- Regulation 93 – has the effect of making any clearance within a significant natural area a restricted discretionary activity except for the clearing of a forest track if the track has been used within the last 50 years or is 'incidental damage' that does not significantly affect the values of that significant natural area, and recovers within some 36 months.
 - Regulation 95 – provides for vegetation clearance of non-indigenous vegetation as a permitted activity, subject to a proviso about compliance with all other permitted activity regulations.
 - Regulation 102 – permitted activity for a plantation forestry activity occurring where nesting of specified indigenous bird species is occurring, subject to a list of procedures being followed.
350. The protection described in the bullet-point list depends on the way the proposed Plan identifies whether an area is significant or not.
351. The definition in the National Environmental Standards for Plantation Forestry is
- significant natural area** means an area of significant indigenous vegetation or significant habitat of indigenous fauna that—
- (a) is identified in a regional policy statement or a regional or district plan as significant, however described; and
 - (b) is identified in the policy statement or plan, including by a map, a schedule, or a description of the area or by using significance criteria.
352. For the proposed Plan, it is Appendix 2 that provide the significance criteria.
353. I am concerned that any statement in Appendix 2 that the Appendix does not apply to plantation forestry would produce the unanticipated result that no areas of indigenous biodiversity within or adjacent to plantation forests in the Waikato District would meet the NES Plantation Forestry definition of 'significant natural area'. This would result in no protection for areas of significant indigenous biodiversity in those plantation forests.
354. Rather than the 21A Hearing Report recommendation to limit the application of Appendix 2, I would suggest that a permitted activity rule in the proposed Plan (in all

zones where plantation forestry occurs), defaulting to a restricted discretionary activity rule if not complied with:

Vegetation clearance within plantation forests

Vegetation clearance within plantation forests is a permitted activity if

(a) the Resource Management (National Environmental Standards for Plantation Forestry) Regulations 2017 are complied with;

(b) no vegetation clearance can occur within a kauri hygiene zone; and

(c) it is not with a long-tailed bat Significant Natural Area.

355. Clauses (b) and (c) of this proposed permitted activity rule makes the rule more stringent than the National Environmental Standards.
356. Regulation 6 provides that a rule in a plan can be more stringent if, among other things, it gives effect to policy 11 of the Coastal Policy Statement or recognises and provides for the protection of significant natural areas.
357. Of the various provisions for the protection of significant natural areas that I have traversed in my evidence, avoiding the risk of kauri dieback disease spreading is the one provision not covered in the NES Plantation Forestry.
358. In my opinion, it is necessary that the earthworks and vegetation clearance rule applying within the kauri hygiene zone need to apply to plantation forestry.
359. One final point on this discussion on plantation forestry and area of significant indigenous biodiversity.
360. The rules outlined above apply to plantation forests. There is no definition of 'plantation forest' in the proposed Plan as notified.¹⁰⁶
361. I recommend that the definition of 'plantation forest' in the National Environmental Standards for Plantation Forestry is adopted and included in the proposed Plan to ensure that the rules do not have wider effect than intended.
362. That definition is:

plantation forest or plantation forestry means a forest deliberately established for commercial purposes, being—

¹⁰⁶Although there is a definition for 'forestry'.

- (a) at least 1 ha of continuous forest cover of forest species that has been planted and has or will be harvested or replanted; and
- (b) includes all associated forestry infrastructure; but
- (c) does not include—
 - (i) a shelter belt of forest species, where the tree crown cover has, or is likely to have, an average width of less than 30 m; or
 - (ii) forest species in urban areas; or
 - (iii) nurseries and seed orchards; or
 - (iv) trees grown for fruit or nuts; or
 - (v) long-term ecological restoration planting of forest species; or
 - (vi) willows and poplars space planted for soil conservation purposes

Earthworks within Significant Natural Areas

Submission 585.33 by the Director-General of Conservation

363. This submission has been discussed at length in the section of my evidence on kauri dieback disease.

364. For completeness, I repeat my recommendations with respect to provisions in the earthworks rules, including those applying within Significant Natural Areas, to address the risk of the spread of kauri dieback disease:

- (i) insert the definition of 'kauri root zone' stated at paragraph 174
- (ii) if the national planning standard definition of earthworks is used,¹⁰⁷ then add amend the definition so that it is:

earthworks means the alteration or disturbance of land, including by moving, removing, placing, blading, cutting, contouring, filling or excavation of earth (or any matter constituting the land including soil, clay, sand and rock); but except within the kauri root zone, excludes gardening, cultivation, and disturbance of land for the installation of fence posts.

- (iii) add the following performance standard to all permitted activity earthworks and vegetation pruning and clearance rules in all zones:

the activity is not within a kauri root zone

¹⁰⁷The reason for this is explained at footnote 85.

- (iv) the insertion of a new restricted discretionary activity rule that requires a management plan for earthworks and vegetation pruning and removal within a kauri hygiene zone (the same wording as the equivalent rule in the proposed Thames-Coromandel District Plan, but extended to include vegetation pruning and removal, and with 'kauri root zone' replacing 'kauri hygiene zone')¹⁰⁸
- (v) the insertion of a further discretionary activity rule where the restricted discretionary activity rule described in (iv) cannot be complied with.

Earthworks and National Environmental Standards for Freshwater

- 365. At paragraphs 327 to 334 I discuss the implications of the Freshwater National Environmental Standards in terms of what it means for vegetation clearance within 10 metres of any natural wetland.
- 366. A similar issue arises with respect to earthworks within, and within a 10 metre setback from, any natural wetland.
- 367. I recommend similar provisions be added to the earthworks rules as I set out above for vegetation clearance.



Andrew Riddell

29 October 2020

¹⁰⁸This rule is set out in Appendix 6 to the 21A Hearing Report. The statement of matters of discretion listed in 2B.a) will need expanding when the rule is copied across. Clause 3A is not relevant and need not be copied across.