

**BEFORE THE HEARING COMMISSIONERS
THE PROPOSED WAIKATO DISTRICT PLAN (STAGE ONE)**

UNDER **the Resource Management Act 1991**

IN THE MATTER **of Hearing 21A: National Environments – Indigenous
Vegetation and Habitats (Proposed Waikato District Plan)
submissions and further submissions**

**STATEMENT OF HILARY JEAN WALKER ON BEHALF OF FEDERATED FARMERS
OF NEW ZEALAND**

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Introduction

1. My name is Hilary Jean Walker. I am a Senior Policy Advisor with Federated Farmers of New Zealand (“FFNZ”).
2. I have reviewed the S42A report prepared by Susan Chibnall dated November 2020, for Hearing 21A, National Environments - Indigenous Vegetation and Habitats in relation to the Proposed Waikato District Plan (“PWDP”). This report addresses matters to which FFNZ made submissions (submitter 680) and further submissions (FS1342).
3. The contents of this statement are made in my role as Senior Policy Advisor, in response to some of the key recommendations made on the submission points that have been assigned to this hearing topic.
4. To assist the Panel the statement follows the same structure as the planning report.

GENERAL COMMENT

5. In FFNZ experience, the best biodiversity outcomes are achieved when Councils have a good understanding of the issues facing landowners and acknowledge the *public good* aspect which is provided on *private land*. This includes paying to undertake ground truthing to provide confidence in the data and provide meaningful incentives to enable good biodiversity management, such as provision of information and advice, contestable funding grants and other non-regulatory tools that reflect the partnership approach needed to achieve the biodiversity gains which are being sought.
6. Sustaining biodiversity on private land requires goodwill, co-operation and individual commitment of landowners and land managers - the imposition of regulation will not achieve this. It needs to be recognised that the reason areas of indigenous vegetation are still located on private land within the district is the protection afforded them by previous and current landowners.
7. Maintaining a diversity of species, ecosystems and gene pool is an integral part of achieving sustainable management of resources. Sustainable management is fundamental to the philosophy of the New Zealand Farmer – their business and lifestyle requires that natural resources be sustained for current and future generations. FFNZ acknowledges that maintaining and enhancing our biodiversity resource is necessary not only environmentally, but also economically and socially. However, we do make the point that such areas only require protection under the Act where these areas are considered significant.

PART 1

Section 4 – Overall approach to Significant Natural Areas

8. FFNZ made a general submission point outlining concerns with the consultation process and the accuracy of the mapping data. Whilst pre-notification feedback was sought and provided Waikato District Council (WDC) with useful insight into the issues faced by landowners with properties containing proposed significant natural areas (SNAs) there was no evidence in the PWDP that those issues were heard, understood or addressed by the Council, with the plan being notified before essential quality control work was undertaken.
9. As a result, FFNZ asked for all proposed SNAs to be ground truthed to establish whether a site has actually met SNA assessment criteria and to improve the accuracy of mapping, before areas become subject to the more stringent land use controls.
10. The concerns landowners have with regards to the accuracy of the SNA identification process and significant flaws with the mapping data have subsequently been acknowledged by the report writer in Section 4. This is appreciated and welcomed as an important start to addressing the situation, and if done well, there is an opportunity to enable a positive and proactive way forward which takes affected landowners with the Council, if not done well, it will add fuel to existing frustrations and further erode confidence in the process.
11. The s42A report recommends an approach which has several parts:
 - (a) Retain the mapped SNAs that have been ground truthed;
 - (b) Delete all other SNA sites from the planning maps that have not been ground truthed;
 - (c) Amend SNA provisions to apply to all indigenous vegetation that meets the Appendix 2 SNA criteria or are identified on the planning maps;
 - (d) Undertake staged reassessment of each geographical area and use a series of plan changes to introduce the identified sites onto the planning maps.
12. FFNZ supports the principle of a planning approach that identifies SNAs using robust methodology and targeted land use controls as being more appropriate than general catch all rules which elevate all indigenous vegetation to a significance status until proven otherwise. The recommended approach is working towards that end and this is generally supported. However, if adopted, the key concerns relate to the transition period between decisions on the PWDP, the reassessment process and notified plan changes. It is noted that no timeframes have been provided for this interim solution/transitional period. The absence of a robust schedule means that the significance of an area can only be determined on resource consent application with the associated costs, delays and uncertainty. If Council wishes to adopt such an approach we believe that this process should occur without delay and in consultation and participation of the rural community.

13. In theory the recommendations have some merit but in practice there is potential for landowners to end up in a difficult position, being caught in 'nomansland' and required to bear the brunt of what is now acknowledged as a flawed identification process. There is potential for considerable uncertainty to be created by the recommendation to use the WRPS Table 11-1 Criteria as the only trigger landowner's have to determine whether SNA rules apply or not.
14. As proposed it also creates inequitable outcomes, with landowner's who haven't had their sites ground truthed, through no fault of their own, expected to pay for an ecological assessment to determine whether the SNA criteria is met or not, or put any works on hold until council has done it. No time frames are provided for this interim period but experience tells us without a concerted effort from Council these matters take years. Landowners' chosen by council to have their sites more robustly assessed through this notification process have had these costs picked up by WDC and whilst they may not like the outcome, at least there is some certainty as to what land use controls will apply and why.
15. With regards to the report writer's preferred approach FFNZ is generally supportive of parts a,b,and d, however there are serious concerns with part c, which essentially elevates all indigenous vegetation to a significance threshold until proven otherwise.
16. The S42A report works through the benefits at para 72 and these are acknowledged. The costs associated with this option are considered at para 73. The personal cost to landowners is acknowledged along with another key point that the change in planning approach will affect landowners who will not realise that the SNA rules may now apply to them.
17. A cost which is not accepted is identified as being insufficient time to undertake site visits and groundtruthing of all the submissions due to this complex issue. The complex nature of the issue is understood however Council has been on notice since the pre-consultation stage that landowners had serious concerns with the desktop analysis used to identify the sites and accuracy of the mapping.
18. The risks of acting or not acting outlined in para 75-76 are accepted, however we are keen to ensure costs and risks are borne by the council, not transferred to individual landowners, because this should help ensure the work stream is prioritised and given sufficient resources to address in a timely fashion.
19. In FFNZ view the risks in acting and not acting, along with the costs to landowners need to be given more weight than they have been in the report. They are considerable enough to require a change in the approach outlined in Part C as being *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*. It is this part of the approach which transfers the risk and costs to individual landowners unfairly and unnecessarily.

20. FFNZ proposes an alternative which we think ticks all the boxes by reducing some of the risks and costs without changing any of the associated benefits:
- (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 groundtruthing.
 - (b)
 - 1. Amend all other areas to a reduced 'alert' layer status with an advice note: *Where a proposed activity requires a resource consent solely as a result of an area being identified as a significant natural area (SNA) and the site has not been ground truthed, Council will meet the costs of the ground truthing assessment to confirm the status and boundaries of the significant natural area. The assessment will be carried out by a Council approved suitably qualified and experienced ecologist prior to an application for resource consent being lodged.*
 - OR**
 - 2. Remove all SNA sites from the planning maps that have not been ground truthed and amend the SNA provisions to include a general clearance rule supported by methods to identify the ecological significance of indigenous biodiversity on an application basis.
 - (c) Introduce a plan change to reintroduce the full mapping concept back into the district plan and amend associated implementation methods in accordance with gazetted National Policy Statement for Indigenous Biodiversity identification process and timelines.
21. It is worth noting the approach outlined at (b) 1. has been adopted by the Waipa District Council, refer Waipa District plan, Section 24 Indigenous Biodiversity, Rule 24.4.1. Other councils have adopted a similar though arguably more complex model, (b) 2. which uses a general clearance rule, rather than alert layer, supported by methods to identify the ecological significance of indigenous vegetation on an application basis.
22. The alternative model at (b) 2. consists of a discretionary activity status for indigenous vegetation clearance if the activity does not meet stated permitted standards. The rule is supported by a corresponding method to determine the significance of the indigenous vegetation. Once the discretionary status of the proposed activity is determined, an informal application outside the resource consent process is made to Council. Council will fund an ecological assessment for the subject site to determine significance assessed against criteria in the plan. This will then be the basis of an Assessment of Environmental Effects should an application for resource consent be initiated. The information provided in the assessment will ensure a resource user is provided with detailed and accurate data to make an informed decision as to merits of undertaking the activity and the likelihood of a successful resource consent application.

23. The benefits of both approaches are largely the same. There are a number of advantages for Council as outlined below:

- A full investigation of the significance of indigenous vegetation sites in the entire district will not need to be undertaken. This will reduce the Council's cost of gathering and ground-truthing information.
- Assessments will be on an application basis, ensuring that only those sites which are at risk of being cleared are investigated for level of significance.
- The assessed significance of sites will be based on robust criteria that can be inserted into the Plan. This will mean that all sites are assessed equally.
- The schedule can be reviewed during a plan change, and incorporated into the Plan if appropriate.
- Clearance of indigenous vegetation for sites which have not been through the ecological assessment process will still be protected by the permitted activity standards.

24. The advantages for resource users and other stakeholders are:

- Permitted activity standards still allow for some indigenous vegetation clearance where appropriate.
- For proposed activities with a discretionary status, the resource user will not have to fund the ecological assessment in recognition that this information will help council meet their Section 6(c) RMA responsibilities.
- The resource users can make a fully informed decision whether to proceed with a consent application based on the level of significance and likelihood of obtaining consent.
- The resource users will know the level of significance of the site, and may undertake voluntary protection or active management actions.

25. An extract of plan provisions necessary to support versions of the alternative (b) 2. approach are provided in Appendix One.

Section 5 – Objectives and policies

26. FFNZ registered opposition to a number of general submission points made by Raglan Naturally seeking public notification for all consent applications relating to vegetation clearance (831.47, FS1342.238) and the introduction of extra protection controls including cat free covenants (831.44, FS1342.237). Opposition was also registered on Carl Ammon's submission to strengthen the requirement to protect and improve biodiversity (12.4, FS 1342.5) on the basis that the notified policies and rules, incorporating the amendments sought by FFNZ, will provide appropriate protection when required and more generally improve biodiversity outcomes across the district and region.

27. These submission points are recommended for rejection, Section 5.3 para 82, the S42A recommendation is supported.
28. FFNZ made a submission (680.2) seeking inclusion of non-regulatory methods into the PWDP. It was surprising and disappointing to see an exclusively regulatory approach being adopted. This coercive 'stick' approach is an outdated and ineffective planning response to an issue whose very success relies on landowner buy-in. The majority of indigenous biodiversity which remains in the district is found on private land. It remains because of the stewardship role successive generations of farmers have embraced.
29. In our experience, the best biodiversity outcomes are achieved when Councils have a good understanding of the issues facing landowners and acknowledge the public good aspect which is being provided. This includes providing meaningful incentives to enable good biodiversity management, such as information and advice, funding grants, rates relief, waiving of consent and processing costs related to biodiversity, and paying for ecological assessments on private land. These are non-regulatory tools that better reflect a partnership approach for achieving biodiversity gains. This important partnership approach is currently missing under the PWDP planning response
30. The submission relief asked for a biodiversity policy and management framework which facilitates a collaborative response to this public good issue. It sought the introduction of non-regulatory methods that include range of meaningful incentives such as: increasing the contestable conservation fund as recommended in the Kessels Ecology report, (Kessels Ecology Significant Natural Areas Summary of Inputs from the Community Consultation Process Dec 2016), assistance with stock exclusion and pest control, and raising education and awareness about the biodiversity values of the district and potential risks and threats to those values.
31. In response to this submission point the S42A report recommends a new policy as follows:

3.1.2 C 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

32. FFNZ acknowledges the recommendation and supports the intention of the new policy.
33. FFNZ registered opposition to the general submission point made by the Waikato Regional Council (WRC) seeking provision of a mitigation hierarchy for indigenous

biodiversity outside an SNA (81.94, FS 1342.15). The approach is not consistent with the WRPS which specifies different implementation methods for managing adverse effects depending on whether a site is an SNA (11.2.2) or not (11.1.3). A mitigation hierarchy is appropriate for SNAs but not indigenous biodiversity more generally. The two methods are included for easy reference:

11.1.3 Avoidance, remediation, mitigation and offsetting (for indigenous biodiversity that is not significant) Regional and district plans:

- a) for non-significant indigenous vegetation and non-significant habitats of indigenous fauna (excluding activities pursuant to 11.1.4):
 - i) shall require that where loss or degradation of indigenous biodiversity is authorised adverse effects are avoided, remedied or mitigated (whether by onsite or offsite methods).
 - ii) should promote biodiversity offsets as a means to achieve no net loss of indigenous biodiversity where significant residual adverse effects are unable to be avoided, remedied or mitigated.
 - iii) when considering remediation, mitigation or offsetting, methods may include the following:
 - i. replacing the indigenous biodiversity that has been lost or degraded;
 - i. replacing like-for-like habitats or ecosystems (including being of at least equivalent size or ecological value);
 - ii. the legal and physical protection of existing habitat;
 - iii. the re-creation of habitat; or
 - iv. replacing habitats or ecosystems with indigenous biodiversity of greater ecological value.
- b) for significant indigenous vegetation and significant habitats of indigenous fauna Method 11.2.2 applies.

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):

- 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 offsite 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 habitats of indigenous fauna where no reasonably practicable alternative location exists

34. The S42A report writer supports the WRC submission, rejects the opposing further submission, and recommends introducing a new two-part policy as follows:

3.1.2A Policy – Management hierarchy as follows:

- (a) Recognise and protect indigenous biodiversity outside Significant Natural Areas using the following hierarchy by:
- (i) avoiding the significant adverse effects of vegetation clearance and the disturbance of habitats in the first instance;
 - (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 residual adverse effects in accordance with Policy 3.1.2B

3.1.2B Policy – Biodiversity Offsetting

- (a) Allow for a biodiversity offset to be offered by a resource consent applicant where an activity will result in significant residual adverse effects to indigenous vegetation or habitat outside a Significant Natural Area, where
- (i) the biodiversity offset is consistent with the framework detailed in Appendix 6 Biodiversity Offsetting;
 - (ii) alternative habitat supporting similar ecological aspects is enabled or enhanced.

35. FFNZ does not support the recommendation and there are further concerns with the 'protect' directive for indigenous biodiversity outside an SNA which is inappropriate in this context. It is inconsistent with RMA principles and widely established and accepted planning approaches. We acknowledge WDC's obligation to recognise and provide for the protection of significant indigenous vegetation and significant habitats of indigenous fauna in regard to RMA Section 6(c). However, the Act does not require protection of all areas of indigenous flora and fauna. A 'protect' policy for all indigenous biodiversity will not achieve sustainable management of resources and would require unduly onerous and restrictive rules to implement.

36. The stated purpose of the new policy 3.1.2B is to enable biodiversity offsetting. The reasoning provided at para 104, is that it is required to achieve the 'no-net loss' principle of the WRPS and without a policy there is no offsetting pathway available to consent applicants. FFNZ finds this reasoning difficult to follow, the notified Policy 3.2.4, pre recommended S42A changes, meets this purpose. The new policy 3.1.2B is not supported, the recommended changes to Policy 3.2.4 are not supported.

Section 6 – Objective 3.1.1

37. FFNZ made a submission extending conditional support to Objective 3.1.1. FFNZ understand the intention of this objective is to give effect to the RMA and WRPS. It is a goal that many farmers and landowners share and reminds farmers to adopt responsible management and environmental practices. FFNZ support for this

objective is conditional on provision of appropriate policy that recognises the role landowners play in protecting and enhancing biodiversity and our relief sought elsewhere in this regard.

Section 8 – Objective 3.2.1 Significant Natural Areas

38. FFNZ made a submission (680.30) seeking amendments to give the Objective more direction and context. It is important to be clear that enhancement goals require a different approach to protection goals which can be achieved, in part via regulation. Regulation can control use but not induce the active management required to achieve enhancement. We recognise that protection of significant indigenous vegetation and significant habitats of indigenous fauna is a RMA Section 6(c) obligation, and that biodiversity is important to all New Zealanders. This does not however justify the PWDP overreliance on a regulatory approach. There are a number of ways Council can discharge their obligations under the Act.
39. Farmers play a fundamental role in the on-going active management and protection of biodiversity on private land in the district and invest hundreds and thousands of dollars in weed and pest control on their own land, every single year. Pests have been identified as the single biggest issues in respect to the management of indigenous flora and fauna and farmers/landowners play a key role in ensuring that pests are actively controlled. We consider it more appropriate to provide support, advice and encouragement through contestable funds to landowners when it comes to protection of ecosystems supporting significant indigenous vegetation and significant habitats of indigenous fauna. It is through such non-regulatory methods that Council can ensure the greatest landowner buy-in and ultimately the best environmental gains.
40. The relief sought the following addition to Objective 3.2.1:

Indigenous biodiversity in Significant Natural Areas is protected and enhanced through a range of regulatory and nonregulatory methods.
41. The S42A Report recommends inclusion of the new policy 3.1.2C, which is supported however FFNZ retains our position with regards to Objective 3.2.1 amendments.

Section 9 Policy 3.2.2 Identify and Recognise

42. FFNZ sought a number of changes to Policy 3.2.2 (680.31) to work through the mapping issues as we understood them. FFNZ support the principle of a policy that seeks to identify areas of national importance and consider that a targeted planning response is more appropriate than general catch all rules which elevate all areas of biodiversity to a significance status until proven otherwise. However, this position increases the importance of the process used to identify the sites, as with significance comes protection and acceptance that extra land use controls may be required to meet RMA obligations.

43. It would be very rare to find a landowner who would not want to look after an area which is truly significant, but frustrations and resentment do result from a flawed identification process. In this regard we are unsure what the method or process which will be used to implement the identification assessment required of Policy 3.2.2(a) and as such cannot assess the merits or otherwise of the process going forward. FFNZ also urge WDC to be strategic and practical in its approach and focus limited resources on working first with those landowners who are engaged and keen to be involved in the first instance. There is little to be gained by backing reluctant landowners into an expensive and protracted litigious battle using public money that would be better spent achieving good outcomes on the ground not on paper
44. The issues which regards to the accuracy of the mapping and identification process have been acknowledged in Section four of the S42A report, with an alternative planning approach recommended in response. A consequential recommendation is to delete Policy 3.2.2.
45. FFNZ understands the flaws in the notified policy however, given the ongoing issues which apply to the identification process and limited recognition given to landowners who host indigenous biodiversity we believe the intention of the policy is sound and consider amendments sought in the submission can help to improve the purpose of the policy.

Section 17 Kauri Dieback

46. FFNZ lodged further submissions opposing the Waikato Regional Council (FS1342.46) and Department of Conservation (FS1342.158, 1342.150) submissions seeking introduction of a new regulatory planning response to address the spread of kauri dieback disease.
47. Whilst FFNZ understands the intention of the submissions, the relief is opposed because it is not appropriate for WDC to implement a planning response over and above what is being undertaken at a national and regional level until an appropriate risk assessment is undertaken.
48. The report writer agrees that the management of Kauri dieback should be dealt with at a national or regional level, para 308, however recommends including a new policy and earthworks rules, nonetheless.
49. The subsequent section 32AA evaluation, page 109, only works through a regulatory option. A third option for consideration should have included a non-regulatory approach, which in FFNZ view is a more efficient and effective territorial authority response for biosecurity and pest management related issues. Collaboration with councils and central government agencies is identified as a key benefit of the regulatory approach, para 316, and a key risk of not acting is identified as preventing this collaborative approach, para 317. FFNZ does not accept this conclusion,

collaboration between agencies and landowners is able to be facilitated within a non-regulatory policy framework and if done well, will be considerably more effective in generating the landowner buy-in required to help ensure the disease does not reach the Waikato district.

50. A further concern with a regulatory approach relates to perverse biodiversity outcomes that may be created if Kauri become a liability for landowners. Farmers may think twice before planting them if they will trigger consent for future farming activities, and fences for protection may not get erected if the setback distance encroaches too much into productive pasture or creates large plant pest corridors.
51. It is acknowledged at para 317 that the number and location of kauri within the district is not known. Without this analysis we ask how Council can know what regulatory impact this proposal will have on WDC and affected landowners. FFNZ can support a non-regulatory approach and considers reference within the district plan to the WRC guidance material will be useful, however the S42A recommended earthworks rules are unsupported at this time.

Section 18 Kanuka and Manuka

52. The s42A report addresses issues which have been created with the identification of kanuka and manuka as being either a threatened or at-risk species in response to myrtle rust threat. Whilst the issues are understood the proposed recommendations are not supported, they will create unnecessary confusion and uncertainty for plan users. Deleting the rule which enables clearance of kanuka and manuka outside an SNA is also problematic because it does not future proof the plan against eventual changes to the threatened or at-risk species list. An outcome which is considered at para 325.
53. FFNZ is unsure why the district plan provisions can't follow the approach outlined in the draft National Policy Statement for Indigenous Biodiversity which states that the presence of these species should not trigger identification as an SNA based on their presence alone. Inclusion of this disclaimer with reference to the WRPS Criteria can be made within the policy or rules framework.
54. FFNZ made a number of submission points seeking amendments to the notified vegetation clearance rules as they apply to kanuka and manuka.
55. The activity standard thresholds that apply to kanuka and manuka clearance for the purpose of maintaining pasture are unduly onerous and are particularly opposed by our members. The retention of this activity as a permitted activity outside an SNA is important. With the exception of the threatened or at-risk status, it is our view that these areas should not be identified as an SNA. The recommended approach is not supported.

56. The notified standards which apply to clearance for the purposes of firewood or arts and craft are also problematic, the S42A recommendation to remove the area standard in 22.2.7 (P2) is supported. However, this activity also needs to be enabled in areas outside an SNA.

PART 2 RULES

Section 20 – Land use, Earthworks - Significant Natural Areas

57. FFNZ made submissions on the proposed earthworks rules which will apply within SNAs. FFNZ understand that areas which are identified as SNAs will be subject to more stringent land use controls for the purposes of protecting the biodiversity values of the site. We understand this is necessary to meet Resource Management Act 1991 (RMA) section 6(c) responsibilities and higher order planning documents such as the NZ Coastal Policy Statement and WRPS.
58. The submission relief sought changes to better enable activities that can maintain and enhance biodiversity outcomes and to better recognise the types of activities which should be able to occur without extra controls when SNAs are identified within a pastoral farming context (22.2.3.3 P1, 680.205). Other changes to the restricted discretionary rule (22.2.3.3 RD1, 680.206) were sought to improve drafting by removing unnecessary duplication within the matters of discretion.
59. The key changes sought for the permitted activity Rule 22.2.3.3 P1 include decoupling earthworks for existing farm infrastructure from the standards and extending the rule to apply to new farm infrastructure. The point being that the standards did not make sense in the context of existing infrastructure and goals to improve biodiversity outcomes can require new fencing for stock exclusion and new tracks for improved access for pest management purposes. The easier and safer it is to set and clear traps the more regularly the task will get done.
60. The report writer accepts the points made by a number of submitters with regards to existing infrastructure and agrees at para 378 that setting area and volume standards is a blunt and arbitrary planning tool in this context. It is also accepted that earthworks associated with maintenance of existing farm infrastructure is unlikely to have any adverse effect on SNA vegetation. The recommendation is to introduce a new permitted activity rule 22.2.3.1 P5(a) for existing infrastructure and this is supported to the extent that it addresses one aspect of the FFNZ relief sought.
61. With regards to new activities, the proposed rules framework and S42A recommended changes enable the vegetation clearance aspect of new fencing under Rule 22.2.7 P1(a)(ii) and new tracks under 22.2.7 P1(vi), however the earthworks required for both would require a Restricted Discretionary resource consent under either the notified Rule 22.2.3.3, RD1(a) or recommended new Rule 22.2.3.1 RD2.

62. This requirement introduces consent costs, on top of labour and materials and creates time constraints – all of which have the ability to stifle good intentions and hinder rather than enable activities which ultimately maintain and work towards enhancing indigenous biodiversity.
63. So concerns remain with the proposed approach for earthworks required to develop new infrastructure. In particular tracking and fencing for explicit conservation activity purposes, but also for other activities such as putting in a new water reticulation system for example, which has potential conservation benefit by enabling stock to have access to alternative water sources. Putting in reticulated water systems may become increasingly necessary as farmers work to meet new freshwater regulations and better manage critical source areas on their properties.
64. New central government regulations designed to make significant improvements to water quality are going to require an increase in the earthworks being undertaken for stock exclusion fencing, putting in water reticulation infrastructure, new culverts and bridges and the new tracks required to reconnect the farm and ensure safe passage for farm vehicles. More will be coming with regards significant natural areas in the form of the National Policy Statement for Indigenous Biodiversity and the stock exclusion and pest management goals which are likely to be sought for biodiversity purposes. Rather than placing extra burden with undue delay, cost and uncertainty in having to seek resource consents for farmers with SNAs, FFNZ is keen to ensure land use controls don't inadvertently create extra compliance costs for activities which will create an overall environmental benefit.
65. A compromise could be to include conservation activities in the new permitted activity rule. Conservation activities are defined in the PDP as *activities associated with indigenous habitat, wetlands and wildlife management and restoration that fundamentally benefit indigenous biodiversity or raise public awareness of indigenous biodiversity values. This includes stock exclusion, research and monitoring, the establishment, maintenance or upgrading of public walking or cycle tracks, interpretive and directional signs, accessory buildings including those for tourism, interpretation or education purposes and the provision of access for plant or animal pest management.*
66. New fencing for stock exclusion and track infrastructure for pest management access, which could require both earthworks and vegetation clearance activities, fit readily within this definition and get closer to the relief FFNZ is seeking. It could be argued that a water reticulation system could also meet the conservation activity definition if it provides an alternative water source and enables stock to be excluded from a site however it is accepted that that interpretation may be contested.
67. As an alternative to the relief FFNZ initially sought, which was for all earthworks associated with farming to be enabled as a permitted activity, the following changes to the recommended new rule 22.2.3.1 P5 (a) could provide a useful way forward:

Earthworks for conservation activities, water reticulation or the maintenance of existing tracks, fences or drains, within a Significant Natural Area

And consequential amendment to new rule 22.2.3.1 RD2

Earthworks in a Significant Natural Area for purposes other than for conservation activities, water reticulation, or the maintenance of existing tracks, fences or drains:

68. Whilst it is accepted that new earthworks for the above activities has potential for interim adverse effects, the enabling planning response is still be consistent with the WRPS Implementation method 11.1.4 (c):

11.1.4 Recognition of activities having minor adverse effects on indigenous biodiversity.

Regional and district plans should include permitted activities where they will have minor adverse effects in relation to the maintenance or protection of indigenous biodiversity. They may include:

...

c) activities undertaken for the purpose of maintenance or enhancement of indigenous biodiversity;

Section 21 – Indigenous vegetation clearance inside an SNA

Rules 22.2.7 P1- D1

69. FFNZ made a range of submission points on the proposed rules framework relating to vegetation clearance inside an SNA, largely seeking changes to better recognise the types of activities which should be able to occur without extra controls when SNAs are identified within a pastoral farming context .
70. The S42A report recommends a number of changes and these are addressed as follows:
- The inclusion of conservation activities new P1(a)(vi) – supported
 - Clarification that non-indigenous species in a SNA can be cleared (new P9) - supported.
 - New permitted activity clearance of manuka and kanuka to maintain productive pasture subject to conditions (P7) – supported however, the new rule also needs to apply to the rule framework of 22.2.8 Indigenous Vegetation clearance outside a Significant Natural Area. The, 10m setback from a waterbody, standard is not supported in the context of maintaining productive pasture and is inconsistent with the reasoning applied in para 433 which states that it would be impractical to impose a setback which applies to the maintenance of existing infrastructure.
 - Removal of the volume threshold in P2 – supported however, FFNZ sought deletion of the condition which requires the removal of kanuka or manuka to not directly result in the death, destruction, or damage of any other tree, bush or plant. The literal interpretation of this condition extends protection to both indigenous

and exotic vegetation including pest plants. It also sets a very high and unreasonable bar and will be difficult to monitor and enforce.

- Inclusion of two new discretionary activities D2 and D3 - not supported. Whilst the purpose of a new rule, reasoned at para 462 may have some merit, the 22.2.7 D2 and D3 rules as drafted in Appendix 2 Recommended amendments in response to submissions, would only add confusion and create uncertainty.

Section 22 – Clearance outside an SNA

Rules 22.2.8 P1- RD1

71. FFNZ made a submission (680.216) seeking a number of changes to 22.2.8 P1. In our view the relief sought is practical, will provide more certainty, avoid duplication and ensure WDC continues to meet RMA obligations. Members have strongly expressed their concern that the thresholds will have a limiting effect on farming practice. It will potentially prevent further development of useful rural resources and trigger the need for resource consent for anticipated and expected activities with the rural zone which is contradictory to a number of objectives and policies within the Plan.
72. As discussed previously in this hearing statement clearance for activities such as formation of fences, firebreaks, crossings, tracks and pest management should be expected to occur on farms and rural areas and FFNZ strongly urges the Hearing Panel to include provision for these activities within the permitted activity framework.
73. The proposed approach is unduly onerous and strongly opposed. Any new on farm infrastructure that may require removal of any indigenous vegetation, regardless of the biodiversity value, will require a restricted discretionary resource consent.



Hilary Walker
29 October 2020

APPENDIX ONE – OTHER IMPLEMENTATION APPROACHES SNA IDENTIFICATION AND ECOLOGICAL ASSESSMENTS

WAITOMO DISTRICT PLAN EXTRACT

11.5.4.5 *Indigenous Vegetation*

Within the Rural Zone the removal or clearance of indigenous vegetation, or indigenous wetland vegetation, shall be a Discretionary Activity subject to assessment for significance under Assessment Criteria 11.6.3.

This Rule does not apply to the following forms of clearance or removal of indigenous vegetation which shall be Permitted Activities:

- (a) The harvesting of indigenous vegetation under a sustainable forest management plan that has been approved under s67(f) of the Forests Amendment Act 1993.
- (b) The trimming of indigenous vegetation for the purposes of maintaining security of supply of overhead services.
- (c) Any impacts on the understorey of plantation forests as a result of harvesting those forests.
- (d) Indigenous vegetation affected by normal maintenance of existing productive pasture and productive forests, and maintenance of existing tracks and fences, provided that on the banks of any water body bank stability is maintained and vegetation is retained as far as practicable.
- (e) Establishment of new tracks and fences through indigenous vegetation where the clearance of indigenous vegetation is no more than 10 metres in width and the track or fence line is constructed to farming best practice, provided that the indigenous vegetation to be cleared lies more than 10 metres from any water body.
- (f) Clearance of indigenous vegetation whose area to be cleared does not contain significant indigenous vegetation or habitat (refer to Assessment Criteria 11.6.3).

Note 1: The Waikato Regional Plan contains Rules relating to the clearance of vegetation in 'high risk erosion areas', and adjacent to watercourses, and Rules relating to tracking and earthworks. Resource consents may be required from the Waikato Regional Council for these activities.

Note 2: Clearance of Indigenous vegetation in the Landscape Policy Area of the Rural Zone is the subject of specific provisions in Rule 12.5.1.4.

Note 3: For the purposes of Rule 11.5.4.5(f) refer to Methods and Incentives 11.7.1.

⇒ 11.7 Methods and Incentives

- 11.7.1 For the purposes of Rule 11.5.4.5(f) and on application to Council, Council will fund an ecological assessment for any area of indigenous vegetation or habitat that is proposed to be cleared up to 30 hectares in size. The purpose of this assessment is to establish whether or not the area of vegetation is significant as assessed against the criteria provided in 11.6.3. This assessment will be carried out by a suitably qualified and experienced ecologist. The assessment report shall include a scaled map and/or aerial photograph showing any areas of significant indigenous vegetation or significant habitat of indigenous fauna, and an assessment of these areas. For any proposals to clear over 30 hectares of vegetation the Council may seek a cost sharing arrangement with the applicant for any ecological assessment work.
- 11.7.2 Council accepts there are community benefits arising from the preservation of significant indigenous vegetation, and that responsibility and potential costs may be imposed upon the landowner. Council will address funding issues to ensure these costs are appropriately shared when developing Strategic and Annual Plans. Heritage Protection Orders provide opportunity to protect a site, and for Council to reimburse costs.
- 11.7.3 Where an application for land use consent or subdivision consent is received by the Council and it is considered to have implications for water quality it will be referred to the Regional Council for comment on water quality issues and to establish the degree of liaison between the Councils that is needed to process it.
- 11.7.4 Non regulatory methods and/or voluntary protection of significant indigenous vegetation and habitat will be encouraged to complement regulatory methods of protection. Council will encourage the voluntary preservation of indigenous vegetation along riparian margins, and the acquisition of Esplanade Reserves on subdivision. Incentives may be offered to promote voluntary preservation of appropriately protected indigenous vegetation, including that along riparian margins.
- 11.7.5 The Council operates a rates relief policy for privately owned lands containing appropriately protected indigenous vegetation. A full copy of the policy can be examined in Council's Policy Manual. The policy currently includes the following categories of land:
1. Land containing a minimum cover of virgin or cut-over regenerating forest of 90% of the title area or land use assessment area;
- or
- Land subject to the conditions described in the Second Schedule, Part I(e) or (o) of the Rating Powers Act 1988, i.e.
- i) An open space covenant under s22 of the Queen Elizabeth the Second National Trust Act 1977; or
 - ii) A heritage covenant under s6 of the Historic Places Act 1993; or
 - iii) A conservation covenant under s77 of the Reserves Act 1977; or
 - iv) A declaration of protected land under s76 of the Reserves Act 1977; or
 - v) A covenant for conservation purposes under s27 and 27A of the Conservation Act 1987; or
 - vi) Maori reservation land designated for natural, historic or cultural conservation purposes under s340 of the Te Ture Whenua Act 1993 or under s439 of the Maori Affairs Act 1953. In particular s439(12)

OTOROHANGA DISTRICT PLAN EXTRACT

- 4.2** Any indigenous vegetation to be removed or modified in the **Rural Effects Area** (including within a Landscape of High Amenity Value) outside **Coastal Policy Area** and **Outstanding Landscapes** except as provided for in Rule 4.1 is a permitted activity where:
- (a) it is proposed to remove up to 5000m² of indigenous vegetation within any 12 month period;
 - (b) the vegetation to be removed is more than 10 metres from a water body; and
 - (c) the vegetation to be removed has been assessed and certified as not being significant in terms of Appendix 2 of this Plan by a suitably qualified person.
- 4.3** Any indigenous vegetation to be removed or modified within the **Coastal Policy Area** (outside **Outstanding Landscapes**) except as provided for in Rule 4.1, is a permitted activity where:
- (a) it is proposed to remove up to 1000m² of indigenous vegetation within any 12 month period for the purpose of establishing a building platform for a permitted or approved / structure or vehicle access;
 - (b) the vegetation to be removed is more than 10 metres from a water body; and
 - (c) the vegetation to be removed has been assessed and certified as not being significant in terms of Appendix 2 of this Plan by a suitably qualified person.

4.6 Unless permitted by Rule 4.1, any indigenous vegetation to be removed or modified which does not comply with Rule 4.2 or Rule 4.3 is a restricted discretionary activity where the vegetation to be removed has been assessed and certified as not being significant against Appendix 2 of this Plan by a suitably qualified person in a report provided to the Council. The Council will restrict the exercise of its discretion to the following matters:

- (i) Maintenance of indigenous biodiversity (including habitats of indigenous fauna); and
- (ii) Preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins; and
- (iii) Remediation / mitigation measures (including species relocation, offset and restorative planting); and
- (iv) The protection of sites of historic heritage.

4.7 Unless permitted by Rule 4.1, any indigenous vegetation to be removed or modified in an **Outstanding Landscape** is a restricted discretionary activity where the vegetation has been assessed and certified as not being significant in terms of Appendix 2 of this Plan by a suitably qualified person in a report provided to the Council. The Council will restrict the exercise of its discretion to the following matters:

- (i) Maintenance of indigenous biodiversity (including habitats of indigenous fauna);
- (ii) Preservation of the natural character of the coastal environment, wetlands, and lakes and rivers and their margins;
- (iii) Remediation / mitigation measures (including species relocation, offset and restorative planting);
- (iv) The protection of sites of historic heritage; and
- (v) The degree to which adverse effects on the values of Outstanding Landscapes are avoided.

Significance Assessment Funding Policy

Where an assessment of vegetation significance is required for any proposal to remove indigenous vegetation under Rules 4.2, 4.3, 4.4A, 4.6, 4.7, or 4.7A, Council will consult with the landowner to agree on the suitability of an ecologist to prepare the assessment. The assessment shall be prepared prior to any application for a certificate of compliance or application for resource consent being lodged with Council.

The party responsible for meeting the cost of an assessment of significance shall be determined in accordance with the criteria set out in the two scenarios described below.

Scenario 1

Where clearance is being contemplated under Rules 4.2, 4.3, 4.4A, 4.7 or 4.7A, the Council will meet the full cost of an ecological assessment, for up to 10 hectares of indigenous vegetation to be cleared provided that:

- (i) the assessment confirms in terms of Rule 4.2, 4.3, 4.4A or 4.7 that the vegetation to be removed is not significant; or
- (ii) prior to accepting any application under Rule 4.4A Council is provided with all the information provided or to be provided for the Sustainable Forest Management Plan / Permit application; or
- (iii) Council is satisfied that the vegetation to be removed under Rule 4.7A is for a conservation activity; or
- (iv) The assessment prepared is not used for the purposes of an application for subdivision consent for an Environmental Lot subdivision pursuant to Section 7 of the Plan.

Where (i) to (iv) above are not satisfied the criteria of scenario 2 will be applied.

If an application for subdivision consent for an Environmental Lot subdivision is received by Council that relies on the assessment prepared for the purposes of Rules 4.2, 4.3, 4.4A, 4.7; or 4.7A, the landowner shall reimburse Council for those costs prior to approval of the subdivision pursuant to Section 224(c) of the Resource Management Act 1991.

Scenario 2:

Where clearance is being contemplated under Rules 4.6 or 4.8; or the provisions of (i) – (iv) in Scenario 1 (as relevant) are not satisfied the applicant shall meet the full cost for preparing an ecological assessment. Council will reimburse the applicant for the cost of the assessment at the time that the decision on the application for resource consent is issued, provided that:

- (i) The total area of indigenous vegetation to be removed does not exceed 10 hectares; and
- (ii) The applicant provides sufficient evidence, in writing, that the ecologist who prepared the report has been paid; and
- (iii) The assessment prepared is not used for the purposes of an application for subdivision consent for an Environmental Lot subdivision pursuant to Section 7 of the Plan.

If an application for subdivision consent for an Environmental Lot subdivision is received by Council that relies on the assessment prepared for the purposes of the rules described in Scenario 2, the landowner shall reimburse Council for the costs it has incurred in preparing the assessment. The landowner shall reimburse Council for those costs prior to approval of the subdivision pursuant to Section 224(c) of the Resource Management Act 1991.

6.2.7 SIGNIFICANT NATURAL AREA ASSESSMENT FUNDING POLICY

- (1) Where an application is required either as a *Controlled, Restricted Discretionary, Discretionary* or *Non Complying Activity* for the removal, clearance or destruction of *Significant Natural Area (SNA)* vegetation from any SNA, in 6.2.6 Schedule of *Significant Natural Areas*, listed as unprotected and which has not been previously ground truthed¹, the *Council* will meet the actual and reasonable costs of an assessment (which may include an ecological assessment) to confirm whether or not the SNA vegetation proposed for removal, clearance or destruction meets the SNA criteria for determining significant *indigenous vegetation* and significant habitats of indigenous fauna contained in the Waikato Regional Policy Statement.
- (2) Where the *Council* determines that an ecological assessment is required, the *Council* will consult with the landowner to agree on the suitability of an ecologist to prepare the assessment. A suitably qualified person is deemed to be a person who:
 - (a) holds a recognised professional qualification(s) and has relevant experience in terrestrial ecology and biodiversity to be able to assess the SNA vegetation against the criteria for determining significant *indigenous vegetation* and significant habitats of indigenous fauna contained in the Waikato Regional Policy Statement; or
 - (b) has relevant experience in relation to the matters set out in (a) above and is approved by *Council* prior to undertaking the assessment.
- (3) The costs of the ecological assessment shall be approved by *Council* prior to the assessment outlined in (1) being undertaken.